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90-1204

No. _____

Supreme Court, U.S.
F I L E D
JAN 23 1991
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

EUGENE P. ECCLI, *Petitioner,*

v.

WILL VON KLEMPERER, *et al., Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. The district court in granting summary judgment ruled in error that there was no evidence of State action in support of a §1983-related claim of unnecessary use of unconstitutional means to effect facially Constitutional State domestic violence statutes. With approximately 50% of U.S. families effected by similar State statutes, should the Third Circuit ratify an evasion of Constitutional scrutiny of governmental violation of Fourteenth Amendment rights as well as scrutiny of governmental public health related responsibilities for encouragement, coercion, and other complicity in local corruption which fans the flames of the fledgling AIDs epidemic?

2. A process of subjugation by Respondents was alleged in Petitioner's original complaint involving rape, torture and use of powerful mind-controlling drug(s) to coerce "consent" from Petitioner's then-wife, with personal

injury to Petitioner as a result of the alleged conspiracy including economic loss, defamation, and invasion of privacy. At what threshold of personal injury to Petitioner on the one hand, and use of governmentally encouraged unconstitutional means including new biobehavioral control technology which can readily be abused to obstruct justice and to maintain a profitable condition of subjugation amounting to *de facto* peonage on the other, does Petitioner become the only effective adversary with standing to pursue full equitable remedies for civil rights violations in a Federal court?

3. During the initial phase of an explicit discovery strategy Petitioner, acting *pro se*, was in substantial compliance with the requirements for a continuance to complete discovery pursuant to Fed.R.Civ.P. 56(f). Is it an abuse of discretion to grant summary judgment under such circumstances, thereby deciding the issues, without a summary judgment

hearing and with discovery well-short of completion on the theory that relief was unlikely?

4. The Third Circuit ordered filing of and presumably relied on documents submitted by Respondents which were not part of the record in the district court. Is it an acceptable departure from the usual course of judicial proceedings to use information of questionable reliability for a purpose for which it was not intended, especially when it had a tendency to induce a decision on an emotional basis?

LIST OF PARTIES

The parties to the proceedings below were the petitioner Eugene P. Eccli and the respondents Will Von Klemperer, Mark Maletz, Pat DeMarco, Alternatives To Domestic Violence, Coopers and Lybrand, J. Crew, and Popular Club Plan.

All respondents in the proceedings below are also respondents before this Court.

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW..... i

LIST OF PARTIES..... iv

OPINIONS BELOW..... 2

JURISDICTION..... 3

CONSTITUTIONAL PROVISIONS AND STATUTES.... 4

STATEMENT OF THE CASE..... 7

REASONS FOR GRANTING THE WRIT..... 22

1. Strict scrutiny of State-related intervention in family matters should be maintained. The Third Circuit's decision in this regard is in conflict with the decisions of this Court and other Circuits in a case where the family and public health related issues are of national importance..... 22

2. In an era of increasingly sophisticated biobehavioral control technology, the implications of prior decisions with respect to standing and peonage are in need of clarification..... 30

3. The premature grant of summary judgment is in conflict with the Third Circuit's and this Court's decisions..... 36

4. The Third Circuit's filing of documents not a part of the record is a departure from the accepted and usual course of judicial proceedings which can short-circuit justice..... 39

APPENDIX..... 1A

Judgment Order Of The Third Circuit..... 1A

Grant Of Summary Judgment By The District Court..... 3A

Order By The Third Circuit Denying Petition For Rehearing And Suggestion For Rehearing In Banc..... 12A

TABLE OF AUTHORITIES

Cases — Page

Adickes v. S.H. Kress & Company
398 U.S. 144 (1970)..... 39

Alvarez v. Wilson
431 F.Supp. 136 (N.D.IL 1977)..... 24

Anderson v. Liberty Lobby, Inc.
477 U.S. 242 (1986)..... 38,40

Barrows v. Jackson
346 U.S. 249 (1953)..... 34

Celotex Corporation v. Catrett
477 U.S. 317 (1986)..... 38

City Of Chicago v. Sturges
222 U.S. 313 (1911)..... 23

Dennis v. United States
71 S.Ct. 857 (1951)..... 25

Drope v. Missouri
420 U.S. 162 (1975)..... 31

Eccli v. Von Klemperer
915 F.2d 1560 (3rd Cir. 1990)..... 2

Foman v. Davis
371 U.S. 178 (1962)..... 37

Griffin v. Breckenridge
403 U.S. 88 (1971)..... 35

Hodges v. United States
203 U.S. 1 (1906)..... 30

Home Telephone & Telegraph Company
v. City Of Los Angeles
227 U.S. 278 (1915)..... 23

Joint Anti Fascist Refugee Committee v. McGrath
341 U.S. 123 (1950)..... 34

Jones v. Alfred H. Mayer
392 U.S. 409 (1968)..... 30

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591 F.2d 499 (9th Cir. 1979)..... 39

Long Island Lighting Co. v. Barbash
779 F.2d 793 (2nd Cir. 1985)..... 36

Lovisi v. Slayton
539 F.2d 349 (4th Cir. 1976)..... 25

Memphis v. Greene
451 U.S. 100 (1981)..... 32

Meyer v. Nebraska
262 U.S. 390 (1923)..... 25

Murrell v. Bennett
615 F.2d 306 (5th Cir. 1980)..... 36

Nebbia v. New York
291 U.S. 502 (1933)..... 28

New State Ice Co. v. Liebmann
285 U.S. 262 (1932)..... 24

O'Neill v. Grayson County War Memorial Hospital
472 F.2d 1140 (6th Cir. 1973)..... 23

Pierce v. Society Of The Sisters Of The Holy Names, Etc.
268 U.S. 510 (1925)..... 24

Pierce v. United States
146 F.2d 84 (5th Cir 1944),
cert den, 324 U.S. 873 (1945)..... 38

In re Sah Quah
31 F. 327 (D.AK 1886)..... 32

Sames v. Gable
732 F.2d 49 (3rd Cir. 1984)..... 37

Samual B. Raymond v. Chicago Union Traction Company
207 U.S. 20 (1907)..... 23

Scheuer v. Rhodes
416 U.S. 232 (1974)..... 38

Schlagenhauf v. Holder
379 U.S. 104 (1964)..... 40

Season-All Indus., Inc. v. Turkeye Sise Ve Cam Fabrik., A.S.
425 F.2d 34 (3rd Cir. 1970)..... 36

Shelley v. Kraemer
334 U.S. 1 (1947)..... 22

Stanley v. Illinois
405 U.S. 645 (1972)..... 25

State v. Marchand
545 A.2d 819 (App.Div.NJ 1988), affm'd,
555 A.2d 1122 (S.Ct.NJ 1989)..... 32

Stickles v. Manss
36 N.J. Super 95..... 34

United States v. Article Of Drug, Etc.
43 F.R.D. 181 (D.DE 1967)..... 38

United States v. Kozminski
101 L.Ed.2d 788 (1988)..... 32

United States v. McClellan
127 F. 971 (S.D.GA 1904)..... 32

United States v. 216 Bottles, More Or Less, Etc.
36 F.R.D. 695 (E.D.NY 1965)..... 37

Warth v. Seldon
422 U.S. 490 (1975)..... 30

Zablocki v. Redhail
434 U.S. 374 (1978)..... 24

Constitutional Provisions

Fourteenth Amendment..... 4,23

Statutes And Rules

18 U.S.C. §2..... 4,23

28 U.S.C. §1254(1)..... 3

28 U.S.C. §1291..... 3

28 U.S.C. §1331..... 3,21

42 U.S.C. §1983.....,3,4,7

42 U.S.C. §1985 (2)..... 5,7,33

42 U.S.C. §1985(3)..... 5,7,35

Miscellaneous

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June 25, 1990, p. 23..... 28

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Pharmacology,
Norwalk: Appleton & Lange 1989..... 33

Congressional Globe,
April 6, 1864, p. 1439..... 31

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New York: Oxford University
Press 1987..... 26

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New York: Human Sciences
Press, Inc. 1988..... 25

Women and AIDs, New Jersey Sunday
Star Ledger, March 25, 1990..... 28

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

The Petitioner Eugene P. Eccli respectfully prays that a writ of certiorari issue to review the judgment of the United States Court Of Appeals For The Third Circuit, entered in the above-entitled proceeding on September 25, 1990, and including any prior or subordinate orders and the denial of the petition for rehearing entered on October 25, 1990.

OPINIONS BELOW

The judgment order of the Court of Appeals for the Third Circuit is reported at 915 F.2d 1560, and is reprinted in the appendix hereto, p. 1A, *infra*.

The order and opinion of the United States District Court for the District of New Jersey (Newark) has not been reported. It is reprinted in the appendix hereto, p. 3A, *infra*.

JURISDICTION

Invoking Federal jurisdiction under 28 U.S.C. §1331 and 42 U.S.C. §1983, the petitioner brought this suit in the District of New Jersey (Newark). On December 21, 1989 the District Court entered an order granting respondents' motions for summary judgment. See p. 3A, *infra*.

On petitioner's appeal with jurisdiction under 28 U.S.C. §1291, the Third Circuit on September 25, 1990 entered a judgment order affirming the District Court's decision. See p. 1A, *infra*. An order denying a petition for rehearing and suggestion for rehearing in banc was entered by the Third Circuit on October 25, 1990. See p. 12A, *infra*.

The jurisdiction of this Court to review the judgment of the Third Circuit is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

FOURTEENTH AMENDMENT: SECTION 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

18 U.S.C. §2 PRINCIPALS

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

42 U.S.C. §1983 CIVIL ACTION FOR DEPRIVATION OF RIGHTS

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other

proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. §1985 CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the rights of any person, or class of persons, to the equal protection of the laws.

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for

the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

STATEMENT OF THE CASE

Petitioner instituted this damage action pursuant to 42 U.S.C. §1983 and 42 U.S.C. §1985. The case is in some respects similar to the Patty Hearst case several years ago. The complaint, filed *pro se* and *per quod*, alleges an ongoing conspiracy to deprive Petitioner and his family of their civil rights. The case involves rape, torture and use of mind-controlling drug(s) to coerce "consent" from Petitioner's wife (since divorced) vigilante activities, de facto peonage and the likelihood of death from AIDs, corruption in County government, terroristic threats, and other offenses. This ongoing pattern of overt acts in furtherance of a civil rights conspiracy under color of State law by a public-private joint venture involves personal injury to Petitioner including invasion of privacy, defamation, intentional infliction of severe emotional distress resulting from the outrageous conduct of the Respondents,

as well as Constitutional torts involving the First, Thirteenth, and Fourteenth Amendments to the U.S. Constitution. The demand for relief, structured to be of collateral benefit to Petitioner's former spouse, includes a request for declaratory judgment because the status-quo was arrived at by illegal means, an injunction to force Respondents to cease and desist, and damages in the amount of $500,000 to be used for rehabilitation of Petitioner's former spouse and her ongoing care.

There is a related case in State court entitled Eccli v. Von Klemperer, *et al.*, Docket No. 32,671 which is now before the Supreme Court Of New Jersey. While that case alleges a common nucleus of operative facts, it was filed before the case in federal district court and the issues on petition for certification/appeal before the Supreme Court Of New Jersey are different in important respects from the questions raised in this Petition.

The details of the alleged conspiracy have not been fully developed at the pretrial stage of this action. Petitioner was not dilatory with discovery, merely careful to avoid injury to innocent persons and slowed by limited funds. Over a period of about three-four months following service of the complaint in this case on Respondents, he partially implemented in a step-by-step fashion an initial discovery strategy in this and the related State court case focused on obtaining relevant information from local, State, and Federal authorities. Recognizing the fear and prejudice on the part of the average citizen about the issues in this case, Petitioner choose a low risk strategy involving subpoenas to law-enforcement related agencies who it was felt may well have made observations as a part of their work and who also had the training and resources to handle a situation involving potential retaliation. To this end the chief of police of Ridgewood, New Jersey was deposed. While his verbal answers to questions did not provide any relevant

information, he did not have an opportunity to review, perhaps amend, and then sign the transcription of his two depositions because of the grant of summary judgment in the case by the district court. Also, a week prior to summary judgment, a stay on further discove was ordered by U.S. Magistrate Stanley R. Chesler. It was ordered despite Petitioner's written opposition pointing out that there was nothing highly unusual about his discovery strategy (the district court later agreed with Petitioner on this point. See p. 10A-11A, *infra*), and that such a stay pending outcome of Respondents' motions for summary judgment might well create a self-fulfilling prophesy. A State subpoena to the Division of State Police in New Jersey resulted in a computer search of files with certain proper names, without success; but they suggested that certain Federal agencies might have some of the information Petitioner was seeking Also, interrogatories in the State court case were issued to all parties in that case who are also Respondents in this Court.

Only two Respondents answered. The others, including Alternatives To Domestic Violence, a department of the County of Bergen, New Jersey refused to answer and the complaint in that case was dismissed in Superior court with a motion to compel answers still outstanding.

Petitioner also made a motion in federal district court to add the United States as a party plaintiff. He argued that this was appropriate where the government stood in responsible relation to a public danger, and in the alternative argued that because of public laws two federal agencies which might have relevant information would not respond to a subpoena unless the United States was a party to the action. Summary judgment was granted by the district court without a hearing. As this discovery-related motion was still outstanding, it was thereby rendering moot by the court. See p. 11A n.4, *infra*.

Petitioner was explicit about his discovery

strategy in his motion papers in the district court proceeding and indicated he wished to continue with discovery pursuant to Fed.R. Civ.P. 56(f) in order to impeach the self-serving denials of Respondents in their motions for summary judgement. Within that timeframe it appeared to petitioner that, pursuant to Fed.R.Civ.P. 11, his signature on a motion or other paper was a certificate comparable to an affidavit in that it represented a good faith effort to be truthful with the recognition that there were sanctions for violation. In his motion for reconsideration with the district court, he corrected this misunderstanding of a technicality on the part of a *pro se* litigant by including an affidavit. This motion summarized and added detail to the discovery strategy he had describ previously in the district court proceeding. He pinpointed critical discovery needs, the financial constraints which slowed discovery, the facts he hoped to obtain, explained why he had not previously discovered the informatio

that he had acted to compel answers to interrogatories in the State court case, and that he had to rely on such information in the short-term as there hadn't appeared to be time to issue another set of interrogatories in the case in district court and receive answers prior to the then-pending return date for summary judgment. Petitioner's request for a continuance was denied.

In June, 1988 an in-house restraining order was entered against Petitioner in a separate action because of a first-time, minor domestic violence offense against his wife (i.e. a first-of-a-kind, non-drug, non-alcohol related incident not requiring medical care during a successful 19 year marriage). In May of 1989, after separation from his wife as a result of the initial events complained of in this case, he attempted to see her on several occasions to explore reconciliation and resolve certain other matters and ended up in contempt of a restraining order. As a result of his being charged

with contempt, he was detained briefly for evaluation at Bergen Pines County Hospital in early August, 1989. He was not committed but rather released on the hospital's own initiative well-short of the maximum time allowed by law for his evaluation. He was diagnosed as not being dangerous to himself or others, no treatment was given during or recommended at the end of evaluation, and any delusions the Superior court felt he might have did not prevent him from standing trial and do not interfere to any significant degree with his ability to get along in society such that either confinement or even outpatient treatment was recommended by the hospital. He is *sui juris* and also, according to an order signed by Hon. Conrad W. Krafte, J.S.C. on November 6, 1989, capable of representing himself *pro se*. The discharge summary from the hospital describes him as not in need of any medication and not merely stable but euthymic, i.e. well in spirit. Despite this, Respondents filed motions during the proceeding in the Third Circuit to introduce documents

written by Petitioner's preliminary evaluators, who in order to facilitate his detention for more extensive evaluation at the hospital, described him as potentially dangerous. These preliminary diagnoses were contradicted in important respects by the hospital upon more thorough evaluation as pointed out above. The documents respondents wished to file were not part of the record in the district court proceeding. Despite this the Third Circuit entered an order on August 13, 1990 denying Petitioner's motion to modify the clerk's prior order which allowed this overstated view of Petitioner by his preliminary evaluators in these documents to be filed.

On June 6, 1990, Hon. Andrew P. Napolitano, J.S.C. indicated that the divorce proceeding that day between Sandra Eccli and Petitioner did not have a preclusive effect on the appeals from the related State court case or the case in federal district court. Petitioner did not make this action a part of a divorce

as that would only ratify the invasion of privacy and intrusion on Constitutionally-protected family rights originally complained of. Also, to use anything like the situation described in the district court or related State court complaints against his spouse might readily be construed as connivance which was not removed from the defenses allowed his spouse by the New Jersey Divorce Reform Act of 1971. Further, a refusal by Petitioner to do anything which would aid or abet a conspiracy against the civil rights of his spouse appears wise as apparently interspousal immunity does not apply to conspiracies to commit an offense against the United States.

The complaint in this case was not filed because of alienation of affections, and the possibility that his spouse might have a sex life following their marriage was not felt to be grounds for a Federal or a State case. Nor did Petitioner complain because he himself had been named previously in a domestic violence complaint and could have

been subjected to punishment including fines and imprisonment even though he was only guilty of a first-time minor offense. Nor has Petitioner argued that his spouse should be prevented from getting a divorce which she freely chooses. What Petitioner actually complained of was that while the domestic violence laws may be facially Constitutional, ostensibly neutral statutes, they are being used for oppression, not as a matter of disproportionate impact, but because they have been applied in this case using unconstitutional means which destroy Constitutionally-protected family rights while aiding a system tantamount to de facto peonage.

The theory of Petitioner's complaint was that the case was justiciable because the injuries to Petitioner were personal, traceable, and redressable. Petitioner did not sue for damages to his spouse but rather filed a complaint *per quod* for injuries to himself resulting not from taking the counts in the complaint piecemeal (see p. 7A-8A,

infra) but viewing them cumulatively as an ongoing pattern of overt conspiratorial acts which resulted in personal injury. He merely structured relief to be of collateral benefit to his former spouse. Petitioner has standing because he has suffered economic injury, public branding of himself and other members of his immediate family, and because of invasi of privacy which effects him personally. There was State action because of overt encour agement and efforts at justification, purporte pursuant to State law, of unconstitutional means. The complaint alleges that a civil instrumentality of the State acted as one of the cooperative forces in a process of subjugation involving Constitutional torts in clear violation of the Thirteenth and Fourteenth Amendments. This conspiracy by Respondents functioning as a public-private joint venture was carried out so as to result in denial of equal protection of Federal and State laws. Many details of this alleged conspiracy were not known to Petitioner at the time of filing his complaint. The com-

plaint accordingly alleged a conspiracy only in conclusory terms, the details being left to the pretrial discovery process, which as described above was prematurely aborted.

The Third Circuit affirmed the district court's grant of summary judgment in a judgment order entered on September 25, 1990 (see p. 1A, *infra*), thereby indicating its opinion that there were neither findings of fact which were clearly erroneous nor was there any error in the conclusions of law in the opinion of the district court. Petitioner filed a timely petition for rehearing and suggestion for rehearing in banc. Several aspects of this petition deserve emphasis:

-- the opinion of the district court indicated that evidence had not been presented with respect to State action. See p. 8A and 9A n.2, *infra*. In fact, the answer to the complaint by counsel for Alternatives To Domestic Violence and another submission

later to the Third Circuit both indicate that this Respondent is a governmental organization. It is a department within the County of Bergen, New Jersey;

-- the other finding was that Petitioner had not presented any evidence to support the conclusory allegations in his complaint. Petitioner did not contest this in the courts below nor does he do so in this Court. What he did argue was that a continuance is normally granted as a matter of course when a party is in substantial compliance with the requirements under Fed.R.Civ.P. 56(f);

-- Petitioner also argued that the other matters mentioned in the district court's opinion are conclusions of law. He further indicated that several of these conclusions were questionable, namely, with respect to Petitioner's standing (see p. 8A, *infra*), lack of a copy of the contract mentioned in the complaint (see p. 10A n.3, *infra*), and that allegedly Petitioner had no right

to continue the action in the faint hope that discovery would reveal favorable evidence (see p. 10A n.3, *infra*). Petitioner pointed out that in his brief before the Third Circuit he had provided many citations from this Court and several Circuits which are in conflict with these conclusions.

The basis for Federal jurisdiction in the court of first instance, the United States District Court for the District of New Jersey (Newark), was 28 U.S.C. §1331.

REASONS FOR GRANTING THE WRIT

1.

Strict scrutiny of State-related intervention in family matters should be maintained. The Third Circuit's decision in this regard is in conflict with the decisions of this Court and other Circuits in a case where the family and public health related issues are of national importance.

According to its own submissions in the proceedings in the district court and in the Third Circuit, Respondent Alternatives To Domestic Violence is a governmental organization. It is a department within the County Of Bergen, New Jersey. This Respondent's actions with respect to Petitioner and his family were done purportedly pursuant to an order from State court. Actions by a State court are State action, Shelley v. Kraemer, 334 U.S. 1, at 14 (1947). Further, Counties are civil instrumentalities of the

State, City of Chicago v. Sturges, 222 U.S. 313, at 323 (1911), and actions by county organizations and officials are State action, O'Neill v. Grayson County War Memorial Hospital, 472 F.2d 1140, at 1143 (6th Cir. 1973).

Acts by Respondent Alternatives To Domestic Violence are therefore subject to Constitutional constraints incorporated in the Fourteenth Amendment, Samuel B. Raymond v. Chicago Union Traction Company, 207 U.S. 20, at 36 (1907). It may not circumvent these constraints by encouragement or other aiding and abetting of the activities of the other non-governmental Respondents which would be repugnant to the Constitution if it had undertaken them directly, Home Telephone & Telegraph Company v. City Of Los Angeles, 227 U.S. 278, at 287, and 291-292 (1915). See also 18 U.S.C. §2, *supra*.

This public organization and the officials associated with any of the acts in this case must show, in order to claim a defense of good faith, that they believed the behavior

they encouraged was legal and such belief was reasonable, Alvarez v. Wilson, 431 F.Supp 136, at 147 (N.D.IL 1977). Significant interference with the family must be supported by sufficiently important State interests, is subject to strict scrutiny, and such interference must be tailored to effectuate only those interests. While facially Constitution State laws may none the less be defective if the means used to effect the State's ends unnecessarily impinge on fundamental family rights, Zablocki v. Redhail, 434 U.S. 374, at 381 and 388 (1978). Unreasonable or arbit inter- ference with certain essentials of interference with certain essentials of liber (e.g. integrity of the family unit, excluding violence as an expressive right other than in self-defense) cannot be dispensed with in the name of experimentation, New State Ice Co. v. Liebmann, 285 U.S. 262, at 280 (1932); Pierce v. Society Of The Sisters Of The Holy Names, Etc., 268 U.S. 510, at 534-535 (1925); Meyer v. Nebraska, 262 U.S.

390, at 399 (1923), because this integrity of the family is protected by the Ninth and Fourteenth Amendments, Stanley v. Illinois, 405 U.S. 645, at 651 (1972); Lovisi v. Slayton, Jr., 539 F.2d 349, at 352/addendum (4th Cir. 1976).

One standard with respect to removal of First Amendment rights is proof of a clear and present danger as perceived by taking into account the gravity of the evil the State wishes to prevent discounted by its improbability, Dennis v. United States, 71 S.Ct. 857, at 864 and 868 (1951). As regards domestic violence, half of all married women will experience a violent episode in their relationship, there does not appear to be a higher than average correlation with standard forms of mental illness, and murder of a spouse is normally the culmination of a series of battering incidents which occur over a period of years, Hutchings, N. The Violent Family, at 63, 70, and 74, New York: Human Sciences Press, Inc. 1988. Yet despite

the fact that 50% of U.S. families can expect to be involved at some point in first time offenses and despite the fact that a substantial number of men have either attempted to kill or actually killed in situations ranging from defense of their country to self-defense in civilian life, the chances of a woman being killed by her husband are less than 1 in 100,000 of the general populatio Peck, E. Domestic Tyranny, at 220, 223, and 224, New York: Oxford University Press 1987.

This is not to make light of a tragic pathology, but merely to point out that it is surprisingly rare. One might ask, since the danger of bodily injury and certainly the danger of death is significantly higher for auto-related accidents, what forms of intervention the State engages in to promote public safety with respect to first time minor offenders and their immediate families beyond fines, higher insurance premiums, and perhaps short-term prison sentences or

temporary suspension of the responsible person's license?

As to domestic violence on the one hand and sexual peonage on the other, judicial procedures are already in place in New Jersey to facilitate in-house restraining orders, eviction of the male, and police protection and even shelter for the woman upon request. What further privacy and family-related Constitutional risks, exposure to AIDs and public health risks, and danger of corruption is acceptable for a marginal increase in social control with respect to first-time minor domestic violence offenders? Beyond advising the woman of the difficulty of in-house enforcement of a restraining order, does the State necessarily have any responsibility beyond perhaps counseling if she decides to try to work things out in a family setting?

AIDs already ranks fifth among diseases in the nation which kill women, and the infection

is not even theoretically curable using known science, AIDs: The Next Ten Years, Newsweek, June 25, 1990, p. 23. Infection over time is statistically a virtual certainty for those with multiple sex partners. With New Jersey already having the highest rate of heterosexual transmission for AIDs in the country according to the medical director of the City of Newark, what alternatives should an organization presumably concerned about women's health and safety encourage among their clients, and at what point can they coerce a woman directly and indirectly as alleged in this case "for her own good", Women and AIDs, New Jersey Sunday Star Ledger, March 25, 1990, section 1, p. 53.

Freedom of association is not Constitutionally mandated with respect to immorality when public health concerns are paramount, Nebbia v. New York, 291 U.S. 502, at 526 n.24 (1933), so protective orders which may exist or be requested in this case cannot

be justified by the right to privacy, thereby holding back discovery.

In an era of increasingly sophisticated biobehavioral control technology, the implications of prior decisions with respect to standing and peonage are in need of clarification.

The allegations in a complaint must be taken as true in deciding on a motion to dismiss for lack of standing, Warth v. Seldon, 422 U.S. 490, at 501 (1975). The peonage Petitioner refers to has been defined as the illegal subjugation by a combination or conspiracy which one can't resist to the will of others with respect to matters a freeman is entitled to control; and this applies not just to physical freedom but to the right to be free in the use of all one's faculties, Hodges v. United States, 203 U.S. 1, at 33-38 (1906). Justice Harlan's views in Hodges were vindicated in Jones v. Alfred H. Mayer, 392 U.S. 409, at 441 n.78.

The all purpose pathetic euphemism for the behavior described in Petitioner's complaint is "socialization". Other evasions include rhetoric about different corporate cultures and pluralism. However, the legislative intent underlying the civil rights laws was explicit that an incident of slavery and subjugation was the abrogation of conjugal rights, Congressional Globe, April 6, 1864, p. 1439, col. 2; and these laws were fashioned to provide protection in situations where a woman was outraged (raped) and the State made no successful effort to afford protection or redress, Congressional Globe, April 3, 1871, p. 428. If Petitioner had been involved in such socialization/subjugation involving his wife, in certain states it would be treated as a very serious offense, Drope v. Missouri, 420 U.S. 162, at 164-171 (1975). Also, mistreatment and mutilation of a person, including their mind which is part of one's body, to impress a sense of inferiority and humiliation is illegal, In re Sah Quah, 31 F. 327, at

330-331 (D.Ak 1886); see also Rehabilitation Of Torture Victims: An Interdisciplinary Treatment Model, American Journal of Social Psychiatry, VII, Summer 1987, p. 162-163.

Facially Constitutional, ostensibly neutral statutes which are used for oppression are Constitutionally defective, Memphis v. Greene, 451 U.S. 100, at 132 n.5 and 134 n.6 (1981). A system of *de facto* peonage, practiced openly in a person's accustomed haunts, implicates both the Thirteenth Amendment and state law, United States v. McClellan, 127 F. 971, at 973 (S.D.GA 1904); State v. Marchand, 545 A.2d 819, at 821-822 (App.Div.NJ 1988), affm'd, 555 A.2d 1122 (S.Ct.NJ 1989). Also, background, culture, age, and any infirmities (such as the partial paralysis of the critical faculties of a person's mind due to drug(s)) are relevant factors in determining the involuntariness of servitude, United States v. Kozminski, 101 L.Ed.2d 788, at 808 and 811 (1988).

Petitioner has not complained about a

prescription for a mild sedative which might have been given to his wife. Rather trauma alone and certainly when coupled with abuse of certain drugs can produce states resembling paranoid schizophrenia. A person's mind could then be controlled, for example, with a combination of neuroleptics and antidepressants, especially if the individual had been suicidally depressed, Katzung, B. Basic and Clinical Pharmacology, at 345 and 349-350, Norwalk: Appleton & Lange 1989. This would account for what Petitioner's wife told him in general terms and what he observed about her behavior over several months during the early phase of the civil rights conspiracy alleged in this case. Without doubt such medical wonders can be helpful to certain people. However, such powerful technology for mind control can be easily abused to obstruct justice (see 42 U.S.C. §1985(2), *supra*). A person can be forced to adjust to conditions of subjugation because such drugs inhibit conditioned avoidance behavior, leaving the mind in a highly susceptible

state.

The likelihood that Petitioner's former spouse could protect her own rights as well as his in such a situation is a relevant consideration with respect to standing, Joint Anti-fascist Refugee Committee v. McGrath, 341 U.S. 123, at 153-154 (1950). Under such circumstances, Petitioner is as a practical matter the only effective adversary, Barrows v. Jackson, 346 U.S. 249, at 259 (1953), reh'g den, 346 U.S. 841 (1953). Also, Petitione is aware that he cannot force his former wife into some kind of reconciliation. However, a claim for relief, involving for example defamation, which exists independently of an action for loss of consortium is not barred because it might have coincidentally supported the now abolished action for alienation of affections, Stickles v. Manss, 36 N.J. Super 95, at 98.

The conspiracy Petitioner complained

of can also be redressed using 42 U.S.C. 1985(3), because such conditions are civilly remediable by persons whose interests are effected, Griffin v. Breckenridge, 403 U.S. 88, at 105 (1971).

The premature grant of summary judgment is in conflict with the Third Circuit's and this Court's Decisions

It is an abuse of discretion to grant summary judgment when discovery is incomplete i.e. when discovery is so limited as to effec a party's basic rights, Long Island Lighting Co. v. Barbash, 779 F.2d 793, at 795 (2nd Cir. 1985); Murrell v. Bennett, 615 F.2d 306, at 311 (5th Cir. 1980). Also, there was no summary judgment hearing in this case despite the fact that it is considered good practice, Season-All Indus., Inc. v. Turkeye Sise Ve Cam Fabrik., A.S., 425 F.2d 34, at 39-40 (3rd Cir. 1970).

The self-serving denials of Respondents in this and the related case in State court (which includes Petitioner's former wife) is an insufficient rationale for summary judgment until discovery is complete, Sames

v. Gable, 732 F.2d 49, at 50-52 (3rd Cir. 1984). A continuance is normally granted as a matter of course in a situation where Petitioner was in substantial compliance with the requirements of Fed.R.Civ.P. 56(f), Radich v. Goode, 886 F.2d 1391, at 1393-1394 (3rd Cir. 1989). As pointed out above, Petitioner did apprise the District court of the status of his initial discovery activities. While he did not do so in an affidavit, he corrected this technical misunderstanding in his motion for reconsideration. A decision on the merits, rather than on technicalities, has been considered the wiser course, Foman v. Davis, 371 U.S. 178, at 182 (1962).

The District court was of the opinion that discovery should not continue because recovery was a faint hope. See p. 10A n.3, *infra*. Petitioner should be entitled to inquire on his own theory of the facts and the law in this case, United States v. 216 Bottles, More Or Less, Etc., 36 F.R.D. 695, at 700 (E.D.NY 1965); United States v. Article

Of Drug, Etc., 43 F.R.D. 181, at 189 (D.DE 1967). As to the lack of a copy of a contract to substantiate certain allegations in the complaint, it could still emerge during discov but even if it does not, a written agreement is not essential to a condition of peonage, Pierce v. United States, 146 F.2d 84, at 86 (5th Cir. 1944), cert den, 324 U.S. 873 (1945).

Discovery has been allowed to enable a plaintiff to establish a claim even when it appears that recovery is very remote or unlikely, Scheuer v. Rhodes, 416 U.S. 232, at 236 (1974). Petitioner should have a full and ample opportunity for discovery, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, at 250 n.5 and 257 (1986), not just a few month with very limited resources, but a period of approximately one year, Celot Corporation v. Catrett, 477 U.S. 317, at 326 (1986).

The Third Circuit's filing of documents not a part of the record is a departure from the accepted and usual course of judicial proceedings which can short-circuit justice.

Since the documents and credibility-related issues were not properly brought before the District court which consequently did not have an opportunity to decide the matter, precedent indicates that on appeal it was not proper for Respondents to expect the Third Circuit to decide on the matter, Life Insurance Company Of North America v. Reichardt, 591 F.2d 499, at 506 (9th Cir. 1979); Adickes v. S.H. Kress & Company, 398 U.S. 144, at 157 n.16 (1970). These documents should have been stricken pursuant to Fed.R.Civ.P. 403, as they confused the issue and their probative value at that point in the judicial proceeding was minimal at best in face of the danger of unfair prejudice, i.e. inducing

a decision on an improper, purely emotional basis.

Even had the documents been filed in the District court proceeding, credibility determinations are a jury function. Credibility is not an issue for summary judgment, Anderson v. Liberty Lobby, Inc., *supra*, at 255. Petitioner is and has been *sui juris* throughout the proceedings in Federal court. Respondents' use of this information for oppression should have been prohibited, Schlagenhauf v. Holder, 379 U.S. 104, at 117-118 (1964).

Respectfully submitted,

Eugene P. Eccli

Eugene P. Eccli
36 Wilcox Place
Fair Lawn, NJ 07410
(201)796-1042
Petitioner, Pro Se

Dated: January 23, 1991

APPENDIX 1

JUDGMENT ORDER OF THE THIRD CIRCUIT

(ENTERED: September 25, 1990)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 90-5212

EUGENE P. ECCLI,
Appellant

v.

WILL VON KLEMPERER,
MARK MALETZ,
PAT DeMARCO,
ALTERNATIVES TO DOMESTIC VIOLENCE,
COOPERS AND LYBRAND,
J. CREW,
POPULAR CLUB PLAN

Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 89-03569)
District Judge: Hon. Maryanne Trump Barry

Submitted Under Third Circuit Rule 12(6)
August 7, 1990

Before: HIGGINBOTHAM, Chief Judge, MANSMANN,
and COWEN, Circuit Judges.

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby **AFFIRMED.**

Costs taxed against appellant.

BY THE COURT,

A Leon Higginbotham

Chief Judge

Attest:

Sally Myvos, Clerk

SEP 25 1990

APPENDIX 2

GRANT OF SUMMARY JUDGMENT BY THE DISTRICT COURT

(ENTERED: December 21, 1989)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action
No. 89-3569 (MTB)

EUGENE P. ECCLI,

Plaintiff,

v.

WILL VON KLEMPERER, MARK MALETZ, PAT DeMARCO, ALTERNATIVES TO DOMESTIC VIOLENCE, COOPERS and LYBRAND, J. CREW and POPULAR CLUB PLAN,

Defendants.

ORDER

This matter having come before the court on the motion of all defendants except Alternatives To Domestic Violence for summary judgment pursuant to Federal Rule of Civil Procedure 56; the motions of defendants William Von Klemperer, Pat DeMarco, J. Crew, and

Popular Club Plan to dismiss pursuant to Fed.R.Civ.P. 12(b)(6) and, failing that, for an order requiring plaintiff to obtain court approval prior to scheduling depositions and for attorneys' fees; and the motion of plaintiff to add the United States as a plaintiff pursuant to Fed.R.Civ.P. 21, Fed.R.Civ.P. 17(a), and Fed.R.Civ.P. 19(a)(2)(i); and the court having considered the submissions of the parties, including the affidavit of Sandra Eccli, without oral argument, pursuant to Fed.R.Civ.P. 78; and

it appearing that *pro se* plaintiff Eugene P. Eccli ("Eccli") alleges in his complaint: Count 1 -- Invasion of Privacy and Interference with Quiet Enjoyment against defendants J. Crew and Coopers and Lybrand for the monitoring of oral communications at the Eccli home by means of electronic surveillance; Count 2 -- Trespassing, Battery, Aggravated Assault and False Imprisonment against defendants Von Klemperer, Maletz and DeMarco for the abduction of plaintiff's wife and the subse-

quent "sexual assault and torture with electric wires"; Count 3 --Invasion of Privacy, Trespassing and Battery against defendant Von Klemperer and perhaps others for contaminating food in the Eccli home with narcotic drugs; Count 4 -- Intentional Infliction of Emotional Distress against defendant Von Klemperer and others for threatening plaintiff's wife with death and serious bodily injury to herself and her family unless she continued to take narcotic drugs and participate in "sexual marathons" with other named defendants; these threats were also used to induce plaintiff's wife to sign a contract specifying that she had consented to the behavior in Counts 1-3; Count 5 -- False Imprisonment, Intentional Infliction of Emotional Distress and Alienation of Affections against all defendants for uttering threats as in Count 4 and creating "ongoing conditions which lead [plaintiff's wife] to believe it is impossible to escape their destructive domination;" Count 6 -- Battery, Aggravated Assault and False Imprison-

ment against all defendants for torturing plaintiff's wife "with electric wires and/or needles"; Count 7 -- Battery and False Imprisonment against all defendants for administering drugs to plaintiff's wife, leaving her "temporarily and perhaps permanently mentally incapacitated;" Count 8 -- 42 U.S.C. § 1983 claim under the 14th Amendment Due Process Clause against defendant Alternatives To Domestic Violence for using the "shackles of slavery to force [plaintiff's wife] to provide sexual and other services to defendants without any trial;" Count 9 -- 42 U.S.C. § 1983 claim under the 14th Amendment Due Process Clause against all defendants for administering drugs to plaintiff's wife, which had the effect of physically restraining her, without "fair procedures;" Count 10 -- 42 U.S.C. § 1983 claim under the 14th Amendment Due Process Clause against defendant Alternatives To Domestic Violence for failing to allow plaintiff and his wife "an opportunity to present the individual merits of [their

marital?] situation [in court?]; Count 11 -- 42 U.S.C. § 1983 claim under the 14th Amendment Due Process Clause against defendant Alternatives To Domestic Violence for obstructing justice and distorting "the intentions of State law by using Domestic Violence laws in an unconstitutional manner;" Count 12 -- (a) Negligence against defendant Alternatives To Domestic Violence for "not informing plaintiff of a potential suicide of his spouse;" (b) 42 U.S.C. § 1983 claim under the 14th Amendment Equal Protection Clause against defendant Alternatives To Domestic Violence for failing to uphold the New Jersey state domestic violence laws and causing harm to plaintiff by withholding information from plaintiff about his wife; and

the court finding that subject matter jurisdiction over this action is based solely upon the purported federal questions in the complaint[1] and, thus, that there is no inde-

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[1] Complete diversity is lacking. Plaintiff and at least one of the defendants are citizens of New Jersey.

pendent basis of jurisdiction over Counts 1, 2, 3, 4, 5, 6, 7, and 12(a); and

the court finding that because the requirement of standing is met only where plaintiff himself has sustained actual injury, Allen v. Wright, 468 U.S. 737, 751 (1984), reh'g denied, 468 U.S. 1250 (1984); Duke Power Co. v. Carolina Envtl. Study Group, Inc., 438 U.S. 59, 79 (1978); Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 38 (1976), plaintiff lacks standing to assert the claims contained in Counts 2, 4, 6, 7, 8, and 9 on behalf of his wife who remains *sui juris*, or the claims in Counts 1, 3, 5, 10, and 11 to the extent that they have not caused injury to him personally; and

the court finding that it is the responsibility of plaintiff to set forth facts suggesting state action on the part of defendants in order to establish a *prima facie* case for his § 1983 claims in Counts 8, 9, 10, 11, and 12(b), West v. Atkins, __ U.S. __, __, 108 S.Ct. 2250, 2255 (1988); Daniel v.

Williams, 474 U.S. 327 (1986); Parratt v. Taylor, 451 U.S. 527, 535 (1981), an obligation which has not been met;[2] and

the court finding that summary judgment will be granted where the moving party demonstrates that there is no genuine issue of material fact, Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Lyons v. U.S. Marshals, 840 F.2d 202, 204 (3d Cir. 1988); and

the court finding that although the non-moving party in a summary judgment motion must be given the benefit of all favorable inferences that can be drawn from the facts, United States v. Diebold, Inc., 369 U.S. 654, 655 (1962); Meyer v. Riegel Products Corp., 720 F.2d 303, 307, n. 2 (3d Cir.), cert. dismissed, 465 U.S. 1091 (1984), mere allegations by the non-moving party in the form of legal conclusions unsupported by documentation of specific facts are insuffi-

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[2]The only intimation of state action is the notation in Count 8 that defendant Alternatives To Domestic Violence "receives public funds (County and State)." However, the mere receipt of public funds by an organization does not cause its decisions and conduct to rise to the level of state action under § 1983, Rendell-Baker v. Cohn, 457 U.S. 830, 840 (1982); Blum v. Yaretsky, 457 U.S. 991, 1011 (1982).

cient to create issues of material fact and, thus, insufficient to preclude summary judgment, Securities and Exchange Comm'n v. Bonastia, 614 F.2d 908, 914 (3d Cir. 1980); see Fed.R.Civ.P. 56(e); and

the court finding that plaintiff has presented no facts to support his conclusory claims;[3] and

the court finding that an award of attorneys' fees and costs by a federal court is

---

[3]Plaintiff relies upon argument, rather than facts, to support his claims. Defendants have submitted an affidavit from Sandra Eccli, plaintiff's wife, in which she categorically denies each and every allegation in plaintiff's complaint. In response, of course, plaintiff maintains that his wife involuntarily signed that affidavit because she lacks the free will to oppose the defendants. However, plaintiff presents absolutely no affirmative evidence. He does not provide the court with a copy of the written contract mentioned in Count 4. He fails to present affidavits or anything else from employees of defendants Coopers and Lybrand, J. Crew, and Alternatives To Domestic Violence, or from any other individuals to corroborate his claims. Moreover, his submissions do not even include any statement from his son, John, who, at the very least, has personal knowledge of the allegations in Counts 1 and 3. While I appreciate the difficulty encountered by plaintiff in obtaining evidence to support his claims, this court will neither investigate his allegations for him nor allow this action to proceed further under Fed.R.Civ.P. 56(f) in the hope, faint though it may be, that discovery will reveal favorable evidence.

warranted only where opposing counsel has acted "in bad faith, vexatiously, wantonly, or for oppressive reasons", Hall v. Cole, 412 U.S. 1, 5 (1973); Ford v. Temple Hosp., 790 F.2d 342, 346 (3d Cir. 1986), a situation which is not presented by this *pro se* plaintiff's inexperience in scheduling depositions;

IT IS on this 20th day of December, 1989

ORDERED that the motion of defendants for summary judgment be, and hereby is, granted on behalf of all defendants; [4] and it is further

ORDERED that the motion of defendants William Von Klemperer, Pat DeMarco, J. Crew, and Popular Club Plan for attorneys' fees is denied.

MARYANNE TRUMP BARRY
U.S.D.J.

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[4] Because summary judgement has been granted, the motions of defendants William Von Klemperer, Pat DeMarco, J. Crew, and Popular Club Plan for an order requiring plaintiff to obtain court approval prior to scheduling depositions and the motion of plaintiff to add the United States as a party plaintiff are rendered moot.

APPENDIX 3

ORDER BY THE THIRD CIRCUIT DENYING PETITION FOR REHEARING AND SUGGESTION FOR REHEARING IN BANC

(ENTERED: October 25, 1990)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 90-5212

EUGENE P. ECCLI,
Appellant

v.

WILL VON KLEMPERER,
MARK MALETZ,
PAT DeMARCO,
ALTERNATIVES TO DOMESTIC VIOLENCE,
COOPERS AND LYBRAND,
J. CREW,
POPULAR CLUB PLAN

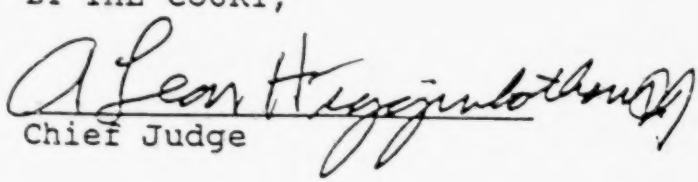
(D.C. Civil No. 89-03569)

SUR PETITION FOR REHEARING

Present: HIGGINBOTHAM, Chief Judge, and SLOVITER, BECKER, STAPLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN, NYGAARD, and ALITO, Circuit Judges.

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court in banc, is denied.

BY THE COURT,



Chief Judge

Dated: October 25, 1990

(2)

No. 90-1204

Supreme Court, U.S.
FILED
FEB 21 1991
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1990

EUGENE P. ECCLI,

Petitioner,

v.

WILL VON KLEMPERER, et al.,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Should the Court accept a frivolous Petition for Certiorari based upon fanciful and preposterous factual allegations which are inherently incredible?

2. Should the Court accept a Petition for Certiorari in a case in which the District Court granted summary judgment after correctly determining that Petitioner had failed to present even a scintilla of evidence in support of his incredible allegations?

RULE 29 STATEMENT

Pursuant to Supreme Court Rule 29 the respondents provide the following listing of parent companies and subsidiaries:

Respondent, Coopers & Lybrand is a partnership having no parent stock company.

Respondent, Alternatives to Domestic Violence has no parent company.

Respondents, J. Crew, Inc. and Popular Club Plan, Inc. are both subsidiaries of J. Crew Group, Inc. Respondent J. Crew, Inc. has one subsidiary, Clifford & Wills, Inc.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i

RULE 29 STATEMENT ii

TABLE OF CONTENTS iii

TABLE OF CONTENTS TO APPENDIX iv

STATUTES AND COURT RULES 1

COUNTERSTATEMENT OF CASE 2

REASONS FOR DENYING THE WRIT 4

I. THE PETITION IS FRIVOLOUS ON ITS FACE AND SHOULD BE DENIED 4

II. THE THIRD CIRCUIT CORRECTLY AFFIRMED THE DISTRICT COURT'S JUDGMENT DISMISSING PETITIONER'S CLAIM FOR THE REASONS SET FORTH IN THE DISTRICT COURT'S ORDER 7

CONCLUSION 10

APPENDIX ..... App. 1

TABLE OF CONTENTS OF APPENDIX

Page

Complaint filed in the United States District Court .....App. 1

Affidavit of Sandra Eccli.....App. 10

Psychiatric Evaluations of Eugene Eccli .....App. 14

Order and Letter Opinion of Superior Court of New Jersey.....App. 27

Orders granting Summary Disposition to Respondents, entered by the Superior Court of New Jersey, Appellate Division, July 19, 1990 .....App. 31

Order Denying Petition for Certification and Dismissing Appeal, entered by the New Jersey Supreme Court, January 22, 1991 .....App. 39

Certificate of Service dated January 23, 1990 ...App. 40

TABLE OF AUTHORITIES

Page

Allen v. Wright, 468 U.S. 737 (1984), *rehearing denied*, 468 U.S. 1250 (1984) 8

Anders v. California, 386 U.S. 738 (1967) 5

Daniel v. Williams, 474 U.S. 327 (1986) 8

Deming v. Carlisle Packing Co., 226 U.S. 102 (1912) 4

Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59 (1978) 8

Hyde v. Van Wormer, 474 U.S. 992 (1985) 4

In re Martin-Trigona, 737 F.2d 1254 (2d Cir. 1984) 6

King v. Fayette County, 92 F.R.D. 457 (W.D. Pa. 1981) 6

Nietzke v. Williams, 490 U.S. 319 (1989) 5, 6

Parratt v. Taylor, 451 U.S. 527 (1981) 8

U.S. ex rel. Dattola v. National Treasury Employees Union, 86 F.R.D. 496 (W.D. Pa. 1980) 6

Urban v. United Nations, 768 F.2d 1497 (D.C. Cir. 1985) 6

West v. Atkins, 487 U.S. 42 (1988) 8

STATUTES AND COURT RULES

28 U.S.C. § 1915(d)

The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.

28 U.S.C. § 1332(a)

The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $50,000, exclusive of interest and costs, and is between –

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign State are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

United States Supreme Court Rule 42.2

When a petition for a writ of certiorari, an appeal, or application for other relief is frivolous, the Court may award the respondent or appellee just damages and single or double costs. Damages or costs may be awarded against the petitioner, appellant, or applicant, or against the party's attorney or against both.

COUNTERSTATEMENT OF THE CASE

Petitioner's Statement of the Case fails to present a concise statement of the case, pursuant to Supreme Court Rule 14, presenting facts material to the consideration of the questions presented. Petitioner's statement of the case merely recites the wild and unsubstantiated allegations of his complaint filed below. The sordid allegations of his complaint, filed in the United States District Court for the District of New Jersey (Docket No. 89-3569) spring entirely from Mr. Eccli's troubled mind. The gravamen of his claims against the defendants/respondents (Mr. Eccli's former employers, Coopers & Lybrand and its former employee Mark Maletz; another former employer of Mr. Eccli, J. Crew, Inc. and its individual employees, and Alternatives to Domestic Violence, a municipal social service agency), is that the defendants allegedly bodily harmed, kidnapped, drugged, tortured and raped his wife, forcing her, with the aid of electronic wires, to sign a contract under which she would provide marathon sexual services for the defendants.

Other allegations include claims that respondents poisoned Mrs. Eccli's food and maintained electronic surveillance of Mr. Eccli's wife and family. Petitioner tried to articulate the allegations under 42 U.S.C. § 1983 claims of due process violations. Although the claims were outrageous, false and libelous, defendants participated in discovery. All defendants denied all the preposterous allegations. Mrs. Eccli, the alleged victim of these egregious acts categorically denied the veracity of Mr. Eccli's allegations. (App. 10) Faced with the absolute dearth of evidence, the Honorable Maryanne Trump Barry presiding over the trial court found that Mr. Eccli

failed to produce any evidence whatsoever in support of his allegations and therefore granted summary judgment dismissing Mr. Eccli's action. (3A-11A).[1] The Third Circuit Court of Appeals upheld the trial court's ruling and denied petitioner's request for a rehearing on October 25, 1990. (12A)

This Court should be aware that the petitioner, appearing *pro se* has not only had his day in the federal courts but has also pursued his groundless claims in the state courts of New Jersey. Mr. Eccli brought a companion action in the Law Division, Bergen County (Docket No. L-38190-89) alleging the same wild and unsubstantiated claims as those raised in the United States District Court. According to the petitioner, the state action "alleges a common nucleus of operative facts" (Petitioner's Brief at 8). The Honorable Isabel Stark presided over the state action at the trial level because of her long familiarity with Mr. Eccli's claims and mental condition. Judge Stark had previously presided over Eugene and Sandra Eccli's divorce proceeding, as well as commitment proceedings held in connection with a domestic violence action filed by Mrs. Eccli against Mr. Eccli for harassment (Docket No. FV02-3801-88A). In the matrimonial suit, counsel for Mr. Eccli was appointed from the Bergen County Mental Health Law Project. Sandra Eccli separately filed two domestic violence complaints against her estranged husband for harassment and fear of her own safety and well-being. The trial court held a full plenary hearing on these

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[1] Mr. Eccli's state law claims were dismissed for lack of diversity jurisdiction, and claims alleging injury only to Mrs. Eccli were dismissed for want of standing. (3A-11A).

issues on August 8, 1989. As documented in Judge Stark's decision rendered January 5, 1990 (Judge Stark's opinion is reprinted pursuant to Supreme Court Rule 14 at App. 28) prior to this hearing a psychiatrist and psychologist evaluated Mr. Eccli. (App. 13) Judge Stark dismissed Mr. Eccli's Complaint offering the following opinion:

> It is this Court's considered opinion that unfortunately Mr. Eccli's emotional distress is a product of his own mental illness. It is not a result to the events he relates in his Complaint. The Court has found that those events never occurred (except in his mind).

Mr. Eccli relentlessly pursued an appeal of the state court's dismissal which was summarily denied by the Appellate Division of New Jersey. (App. 31) Undaunted, Mr. Eccli petitioned the Supreme Court of New Jersey for certification (Docket No. 32,671) which was denied *with costs* on January 24, 1991. (App. 39)

REASONS FOR DENYING THE WRIT

I.

THE PETITION IS FRIVOLOUS ON ITS FACE AND SHOULD BE DENIED

Appellate courts have the inherent power to dismiss appeals or petitions which are obviously frivolous and lacking in merit. This power is implicit in Supreme Court Rule 42.2, which provides for the imposition of damages upon dismissal of a frivolous cause. *Deming v. Carlisle Packing Co.*, 226 U.S. 102 (1912). The Rule sets no standards for determining whether a petition for certiorari is frivolous. *Hyde v. Van Wormer*, 474 U.S. 992 (1985). However, this Court has recently adopted standards for the determination of frivolousness in other contexts, which

are sufficiently broad and general as to be applicable in the instant case. In *Nietzke v. Williams*, 490 U.S. 319 (1989), a unanimous Court held:

> The courts of appeals have, quite correctly in our view, generally adopted as formulae for evaluating frivolousness under [28 U.S.C.] sec. 1915(d) close variants of the definition of legal frivolousness which we articulated in the Sixth Amendment case of *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). There, we stated that an appeal on a matter of law is frivolous where "[none] of the legal points [are] arguable on their merits." Id., at 744, 87 S. Ct. at 1400. By logical extension, a complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact. As the courts of appeals have recognized, sec. 1915(d)'s term "frivolous," when applied to a complaint, embraces not only the inarguable legal conclusion, but also the fanciful factual allegation. 490 U.S. at 314.

In the instant case, the petition is based entirely upon "fanciful factual allegations." They are so fanciful, indeed, that merely to read them is to expose them as preposterous. Petitioner alleges that Coopers & Lybrand, a national accounting firm, J. Crew, a mail order clothing distributor, and Alternatives to Domestic Violence, a municipal agency, conspired to drug and torture petitioner's ex-wife. (App. 1) He further claims that Respondents coerced Mrs. Eccli into signing a contract under which she must provide "marathon sexual services" to various of the individual respondents. (App. 3 and App. 5) Of course, Mr. Eccli has never produced a copy of the alleged contract. He sought rescission of this contract in

the state court action, but has not pursued that remedy in federal court.

Mrs. Eccli, who divorced Petitioner effective June 6, 1990, has denied each and every one of these ridiculous allegations. (App. 10) This Court should recognize, as five lower courts have recognized, that Petitioner's allegations are so outlandish as to be inherently incredible. The Petition on its face lacks any basis whatsoever in fact or law.

An appeal or petition may be summarily dismissed if, like the instant appeal, it is lacking even an arguable basis in law and fact. *Nietzke, supra; Urban v. United Nations*, 768 F.2d 1497, 1499 (D.C. Cir 1985). In disposing of such an appeal, "the court has an obligation to protect and preserve the sound and orderly administration of justice." *Urban*, 768 F.2d at 1499; *In re Martin-Trigona*, 737 F.2d 1254, 1262 (2d Cir. 1984). This Court must acknowledge, as many lower federal courts have acknowledged in the context of section 1915(d) determinations that "there is a limit to the indulgence of the law and the resultant imposition on the defendants." *King v. Fayette County*, 92 F.R.D. 457, 458 (W.D. Pa. 1981); *U.S. ex rel. Dattola v. National Treasury Employees Union*, 86 F.R.D. 496, 499 (W.D. Pa. 1980).

The legal system is designed to deal, for the most part, with rational people who find themselves in conflict or disagreement with other rational people. There is little the courts can do when confronted with a party like Mr. Eccli, who is completely irrational with respect to these issues. The courts are not the proper forum for a man so desperately in need of psychiatric treatment. To take his

position seriously, even out of an overabundance of solicitude for his rights, is only to burden the court system and defendants, with no possibility of any benefit to Mr. Eccli. Mrs. Eccli's interests and the respondents' interests must also be considered by the Court. The best accommodation of the interests of all of the parties herein would be denial of the petition.

II.

THE THIRD CIRCUIT CORRECTLY AFFIRMED THE DISTRICT COURT'S JUDGMENT DISMISSING PETITIONER'S CLAIM FOR THE REASONS SET FORTH IN THE DISTRICT COURT'S ORDER

The District Court correctly ruled that Counts 1 through 7 and 12(a) of Petitioner's Complaint alleged causes of action under state law sounding in tort. These redundant Counts alleged, *inter alia*, invasion of privacy, assault, battery, intentional infliction of emotional distress and a R.I.C.O. claim arising from the fantastic events alleged by Petitioner and set forth in Respondents' Counterstatement of the Case. The District Court recognized that there was no independent basis for federal jurisdiction over these state law claims, and that diversity jurisdiction was unavailable as at least one of the individual defendants in that court resided in New Jersey. There is and has been no dispute as to this jurisdictional fact. Consequently, the District Court dismissed these counts on jurisdictional grounds. This dismissal was patently correct, as Petitioner could not meet the clear-cut requirements of 28 U.S.C. § 1332(a) with respect to these counts of the Complaint.

The District Court then turned its attention to the remaining Counts 8, 9, 10, 11 and 12(b). In these Counts, Mr. Eccli alleged that the separate defendants violated Fourteenth Amendment due process protections afforded under 42 U.S.C. § 1983. Mr. Eccli wildly alleged, *inter alia*, that defendant, Alternatives to Domestic Violence used the "shackles of slavery to force [plaintiff's wife] to provide sexual and other services to defendants without any trial." (6A) Mr. Eccli further fantasized and alleged that the defendants administered drugs to his wife in order to physically restrain her without fair procedures in violation of her Fourteenth Amendment rights. (6A) The Court dismissed that aspect of each of these Counts which alleged injury solely to Mrs. Eccli, who remains *sui juris*, on the grounds that Mr. Eccli lacked standing to assert them. *Allen v. Wright*, 468 U.S. 737, 751 (1984), *rehearing denied*, 468 U.S. 1250 (1984); *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 79 (1978).

Finally, the Court ruled that Mr. Eccli failed to meet his burden to set forth facts sufficient to establish a *prima facie* case for his own § 1983 claims, citing *West v. Atkins*, 487 U.S. 42 (1988); *Daniel v. Williams*, 474 U.S. 327 (1986); and *Parratt v. Taylor*, 451 U.S. 527, 535 (1981).

The Court continued its ruling stating:

> [m]ere allegations by the non-moving party in the form of legal conclusions unsupported by documentation of specific facts are insufficient to create issues of material fact.

The court accordingly granted summary judgment finding that Mr. Eccli failed to establish federal jurisdiction and failed to present any facts to support his conclusory claims.

Review of Petitioner's Complaint and the record, as presented in Respondents' Brief and Appendix reveals that the District Court properly disposed of Petitioner's claims. Even if the District Court's disposition of the jurisdictional and standing issues were incorrect, the error would be harmless. The facts as Petitioner alleges them simply never occurred, and are so obviously fanciful as to be beyond proof. The District Court recognized this flaw in Petitioner's case with respect to his own claims under 28 U.S.C. § 1983. His other claims also have no factual basis. They were properly dismissed, and the dismissal was properly affirmed by the Third Circuit.

CONCLUSION

The Petition before the Court is frivolous on its face and should never have been brought before this Court. Respondents respectfully request that this Court deny the petition and decline to issue a Writ of Certiorari in this case.

Respectfully submitted,

ARTHUR R. SCHMAUDER*
SHANLEY & FISHER, P.C.
Attorneys for Respondents
Coopers & Lybrand and Mark Maletz

ROBERT E. MENSEL*
HANLON, HERZFELD & RUBIN
Attorneys for Respondents
J. Crew, Popular Club Plan,
Will Von Klemperer, and
Pat DeMarco

PETER G. GEIGER
County Counsel
Attorneys for Respondent
Alternative to Domestic Violence

* Attorney(s) of Record

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Eugene P. Eccli,

Plaintiff

-vs-

Will Von Klemperer
Mark Maletz
Pat DeMarco
Alternatives To Domestic Violence
Coopers and Lybrand
J. Crew
Popular Club Plan,

Defendants

CIVIL ACTION
NO. 87-3569

MTB

COMPLAINT AND DEMAND FOR JURY TRIAL

ORIGINAL FILED
AUG 23 1989

PARTIES

Plaintiff:

Eugene P. Eccli, 36 Wilcox Place, Fairlawn, New Jersey

Defendants:

Will Von Klemperer, 156 Colonial Road, Summit, New Jersey

Mark Maletz, 115 Warren Av, Rochester, New York

Pat Demarco, Hackensack, New Jersey (c/o J. Crew, 625 6th Av, New York, New York)

Alternatives To Domestic Violence, 21 Main Street, Room 111W, Hackensack, New Jersey (Alice Stollman)

Coopers and Lybrand, 1251 Avenue of the Americas, New York, New York (Sam Ruello, Vice-Chairman)

J. Crew, 625 6th Avenue, New York, New York (Arthur Cinader, Sr., President and Joe DelGaudio, Executive Vice President)

Popular Club Plan, 22 Lincoln Place, Garfield, New Jersey (Arthur Cinader, Sr., President and Joe DelGaudio, Executive Vice-President)

JURISDICTION

Jurisdiction on certain of the issues in this case belongs in Federal District Court because these issues involve the breaching of fundamental Constitutional protections, as is hereinafter more fully described and because of diversity with Defendants located in more than one State.

CAUSE OF ACTION

Plaintiff is hereby filing a complaint about the criminal and tortious activities of the Defendants. Several Defendants have been joined to this complaint including individuals, a public organization, and because of vicarious liability as employers, several businesses as well (with mention of the name of a cognizant individual). This was done because of a public-private "joint venture" as hereinafter more fully described.

This complaint is filed pro se and per quod, as the activities of the Defendants damage Plaintiff's interests directly and have also caused substantial harm to Plaintiff's spouse, Sandra J. Eccli.

Another complaint has been filed in Superior Court in the State of New Jersey (Docket No. L-38190 89). A copy of this other complaint (and its associated attachments) is attached as Exhibit 1 of this complaint in Federal District Court. Exhibit 1 is an integral part of this complaint because it provides essential background information.

The Pleadings are as follows:

1). Invasion of Privacy – during the period of May-September, 1988 certain Defendants (J. Crew and Coopers and Lybrand) in collusion planned for and procured the use of techniques of electronic surveillance to monitor oral communications in the Plaintiff's home at 20 Pomander Walk, Ridgewood, New Jersey. This was done without the Plaintiff's permission;

2). Invasion of Privacy – abduction, involving illegal entry and forcible and/or fraudulent removal of Mrs. Eccli by Mr. Von Klemperer, Maletz, DeMarco and others from the Eccli home on or about August 19, 1988 for the purpose of sexual assault and torture with electric wires;

3). Invasion of Privacy – poisoning, involving illegal contamination of certain food item(s) in the Eccli home sometime during the period of August 20 – September 12, 1988 by Mr. Von Klemperer and perhaps others with drug(s) unspecified, such drug(s) having narcotic affects [sic];

4). Invasion of Privacy – involving extortion as well as duress, fraud, and incapacity in contract when on the days immediately following the abduction incident, Mr. Von Klemperer and others did visciously threaten Mrs Eccli with bodily injury and even death for her and her family unless she continued to take the drug(s) mentioned above, participated in sexual marathons with employees of the businesses mentioned above, and kept silent about what was happening. Also, following on the extreme duress caused by the events described above and after continuous overdoses of the drug(s) left Mrs. Eccli mentally enfeebled and in shock from her injuries so as

not to be able to enter into contractual relationships, Mr. Von Klemperer and others did entice Mrs. Eccli into signing a contract whose terms gave the appearance that the illegal behavior in 1-3 above had been consented to. This alleged contract also has been used by the Defendants to justify ongoing irresponsible behavior;

5). Involuntary Servitude – following on the damaging sequence of actions outlined above and continuing intermittently until the present. Defendants have created ongoing conditions which lead Mrs. Eccli to believe it is impossible to escape their destructive domination. These conditions effect Mrs. Eccli and to some extent the Plaintiff and involve terroristic threats of bodily harm in retaliation if Mrs. Eccli tries to extricate herself through a formal complaint or other means from the degrading and abusive relationship with Defendants;

6). Involuntary Servitude – involving torture. The threats described above are especially crippling psychologically following on torture and brainwashing sessions where Mrs. Eccli was abused with electric wires and/or needles;

7). Involuntary Servitude – involving illegal administration of drug(s) to Mrs. Eccli which cause a paralysis of the critical faculties of a person's mind, leaving them temporarily and perhaps permanently mentally incapacitated so they can no longer appraise or control their conduct;

8). Involuntary Servitude – involving peonism, when one of the Defendants, namely Alternatives To Domestic Violence of Hackensack, New Jersey – an organization which receives public funds (County and State) – is involved is using the above shackles of slavery to force an

individual, Mrs. Eccli, to provide sexual and other services to Defendants without any trial. Additional information can be found in Exhibit 1, p4, items 12 and 14;

9). Breach of Due Process Provisions – due process provisions of the U. S. Constitution have been breached over the last year by the Defendants, involving use of drug(s) on Plaintiff and Mrs. Eccli which have the effect of physically restraining an individual without fair procedures;

10). Breach of Due Process Provisions – involving Alternatives To Domestic Violence, when they classified the Plaintiff and Mrs. Eccli for the burden of their actions without giving us an opportunity to present the individual merits of our situation;

11). Breach of Due Process Provisions – on the part of Alternatives To Domestic Violence, when they distorted the intentions of State Law by using Domestic Violence laws in an unconstitutional manner, namely to prevent the Plaintiff from assisting his spouse to extricate herself from a condition of involuntary servitude, thereby obstructing justice;

12). Racketeer Influenced and Corrupt Organization – on the part of Alternatives To Domestic Violence, by not informing the Plaintiff of a potential suicide of his spouse when she found it impossible to extricate herself from a destructive relationship with the Defendants. The potential suicide placed an affirmative duty on alternatives To Domestic Violence to overide [sic] concerns about confidentiality for Plaintiff's spouse and inform the Plaintiff. Further, there is a denial of equal protection under the law as the very domestic violence laws in the State of New Jersey which Alternatives To Domestic Violence is

pledged to uphold encourage them to inform a potential plaintiff of among other things harrassing actions which their spouse is unwillingly involved in with the other Defendants and which could damage the potential plaintiff. This information would have lead [sic] to a formal complaint much sooner, stopping the various forms of racketeer-related violence to members of Plaintiff's family. Instead, part of the rationale for intentionally withholding such information from the Plaintiff has been that they were "testing" the Plaintiff and his wife, despite the fact that such testing is clearly destructive physically and psychologically, and damages the integrity of the individuals involved. Also, there has been bribery and corruption specifically related to this case involving Alternatives To Domestic Violence and the other Defendants, as described in Exhibit 1, p4, item 14.

DEMAND

The relief requested by Plaintiff includes the following:

Plaintiff requests an immediate show cause order followed later in the proceedings by a permanent injunction to restrain the Defendants from further involvement or communication of any sort with the Plaintiff, Mrs. Eccli, and Plaintiff's son. The Federal District Court has authority for such action in this case for several reasons:

– if Defendants are innocent, a show cause order with temporary restraints should not damage their interests; and if guilty, immediate action will prevent irreparable harm from occurring to Plaintiff or Mrs. Eccli in retaliation for Plaintiff's filing this complaint, and prevent the

relative position of the Plaintiff and his immediate family from degrading further until there is time for a trial;

– the invasion of privacy described in this complaint is against Federal law. The status quo, namely a condition of involuntary servitude characterized by ongoing threats, torture, brainwashing, drug(s), and other forms of abuse from which it is psychologically impossible for Mrs. Eccli to extricate herself was therefore arrived at by illegal means;

– involvement among the Defendants, namely between private actors and an organization using public funds (in this case Alternatives To Domestic Violence, a County agency using County and State funds) includes physical and economic contacts and direct aid or subsidy. This type of joint venture between public and private actors makes the actions of not merely the public actor but the private actors as well subject to Constitutional constraints even though no formal agreement may exist. In this case, not only is the 13th Amendment to the Constitution violated, but due process protections in the Constitution have been breached as described in the Pleadings;

– there is Constitutional protection for privacy to assure a substantive measure of sanctuary for the family from unjustified interference by the State so relationships which attend the creation and sustenence [sic] of a family can be maintained. In this case, the sanctuary of the Plaintiff and his immediate family has been wilfully, wontonly, and repeatedly violated. The interference described in the Pleadings and Exhibit 1 to this complaint is arbitrary and unjustified as the illegal and violent behavior which is an essential part of the intervention

contravenes public policy, does not benefit the public, and did not improve the situation for members of Plaintiff's immediate family.

* There has been complicity by Alternatives To Domestic Violence in the tortious conduct of the other Defendants and an unconstitutional interpretation of State law which Alternatives to Domestic Violence has used to camouflage their actions. These actions amount to those of a racketeer-influenced, corrupt organization. Plaintiff requests reversal of a restraining order against him so that a process of reconciliation with Mrs. Eccli can proceed without unjustified interference. While the Court might normally have to balance Mrs. Eccli's personal freedom of choice against the interests of promoting a stable family life, this is not an issue when the woman has lost effective control of her mind and her decisions after experiencing an ongoing condition of involuntary servitude as described herein.

* The actions of the Defendants include defamation of Plaintiff and Mrs. Eccli as more fully described in Exhibit 1, p3, item 8. Plaintiff requests restitution in the form of best efforts by Defendants to reverse the damage to the professional and personal reputations of Plaintiff and Mrs. Eccli.

* The Criminal Conversation of the Defendants was accompanied by independent torts (namely invasion of privacy, mental anguish, fraud, and defamation), resulting in personal damages which were immediate and consequential for the Plaintiff and Mrs. Eccli. The acts of the Defendants described in this complaint were done with malice and wonton disregard of Plaintiff's and Mrs.

Eccli's self-respect and dignity. Plaintiff requests $500,000. in damages from Defendants over and above any attorney's fees, Court costs, or other associated expenses, said funds to be used by Plaintiff for ongoing medical care of Mrs. Eccli.

As the issues involved in this case are both equitable and legal, Plaintiff requests a jury trial.

/s/ Eugene P. Eccli
Eugene P. Eccli
36 Wilcox Place
Fairlawn, New Jersey

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

EUGENE P. ECCLI, Plaintiff, vs. WILL VON KLEMPERER, MARK MALETZ, PAT DeMARCO, ALTERNATIVES TO DOMESTIC VIOLENCE, COOPERS and LYBRAND, J. CREW and POPULAR CLUB PLAN, Defendants.	Case No. 89-3569 (HAA) Hon. Maryanne Trump Barry, U.S.D.C.J. **AFFIDAVIT**

STATE OF NEW JERSEY :
: SS.
COUNTY OF :

Defendant, Sandra Eccli, of full age and on her oath, deposes and says:

1. To the best of my knowledge, neither Pat De Marco, William Von Klemperer, nor any other employee of J. Crew or Popular Club Plan, has ever used any electronic surveillance technique to monitor oral communications in the plaintiff's home at 20 Pomander Walk, Ridgewood, New Jersey during the period of May through September 1988 or at any other time as alleged in paragraph 1 of the plaintiff's complaint.

2. I was not abducted from my home on or about August 19, 1988, as alleged in paragraph 2 of the plaintiff's complaint.

3. None of the defendants ever poisoned food in my home during the period of August 20, 1988 through September 12, 1988 or at any time as alleged in paragraph 3 of the plaintiff's complaint.

4. None of the defendants have ever threatened me with bodily injury or death as alleged in paragraph 4 of the plaintiff's complaint.

5. I have never participated, willingly or unwillingly, in "sexual marathons" with the defendants as alleged in paragraph 4 of the plaintiff's complaint.

6. I have never entered into a contractual relationship with the defendants as alleged in paragraph 4 of the plaintiff's complaint.

7. The defendants never created conditions which lead me to believe "it was impossible to escape their destructive domination" as alleged in paragraph 5 of the plaintiff's complaint.

8. I have never been held under the "domination" of any of the defendants as alleged in paragraph 5 of the plaintiff's complaint.

9. I have never been held in involuntary servitude or abused with electric wires or needles as alleged in paragraph 6 of the plaintiff's complaint.

10. I have never been held in involuntary servitude by the administration of drugs as alleged in paragraph 7 of the plaintiff's complaint.

11. I have never been held in involuntary servitude or been forced to provide sexual or other services to any

of the defendants as alleged in paragraph 8 of the plaintiff's complaint.

12. The defendants have never physically restrained me through the use of drugs as alleged in paragraph 9 of the plaintiff's complaint.

13. All allegations in the plaintiff's complaint asserting wrongful acts by the defendants are untrue.

14. I have never met, nor have I ever had a conversation with Pat De Marco.

15. I have never met, nor have I ever had a conversation with William Von Klemperer.

16. To the best of my knowledge, my husband Eugene Eccli is an extremely sick man who suffers from paranoid delusions. The allegations in the Complaints filed in both state and federal court have no basis in fact, and arise from Mr. Eccli's delusions.

/s/ Sandra Eccli
SANDRA ECCLI

Sworn to and Subscribed before
me a Notary Public of the State
of New Jersey on this 1st day
of November, 1989.

REGINA MARY FAITH
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JAN. 24, 1994
NOTARY PUBLIC OF NEW JERSEY

/s/ Regina Mary Faith
Nov. 1, 1989

[LOGO]
FAMILY SERVICES OF BERGEN COUNTY
10 BANTA PLACE,
HACKENSACK, NEW JERSEY 07601
(201)342-9200

RECEIVED
JUL 13 1989
ISABEL BREWER STARK
J.S.C.

Natalie C. Webb, ACSW
Executive Director

July 10, 1989

Jacob E. Stump, MD
Medical Director

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The Honorable Isabel Stark, J.S.C.
Superior Court of New Jersey
Chancery Division-Family Part
Bergen County Court House
Hackensack, N.J. 07601

Re: Eccli vs Eccli
Docket No. FV-02-2720-89A

Dear Judge Stark,

Enclosed you will find our psychological/psychiatric evaluation on ___.

I hope it will be helpful to you. Please feel free to contact me if you have any questions or concerns.

Sincerely,

/s/ Barbara Westerberg
Barbara Westerberg, MSW
Diagnostic Unit Coordinator

PSYCHOSOCIAL EVALUATION
Eccli vs Eccli
Family Services of B.C., Hackensack, N.J.

Psychosocial interviews: Eugene Eccli, 6/6/89, and Sandra Eccli, 6/8/89, with Dr. Sally Feather, psychologist, and Barbara Westerberg, CSW.

Eugene Eccli, 42, and Sandra Eccli, 53, were married in May 1969. They have one son John, age 17. Eugene is at present asking for custody of his wife and son. At present there is a restraining order against Eugene. He admits he knocked Sandra down in June 1988 and that it was

wrong. He left her in September 1988 and wanted a divorce, but he now wants a reconciliation and she wants a divorce. Eugene said he would like to have Sandra alone. There would be "a lot of verbal arguing for a few days" but he needs temporary custody because he is committed to "work the marriage out".

Eugene is the youngest child of Irene, 85, and Maris (deceased in 1963 when Eugene was 16). He has two older sisters, Virginia 57 and Yvonne 51 and a brother Bill 55. Eugene's father was sick by the time he was six and he was "palmed off on teenage sisters". Sandra is an only child of Mary Fulton, 85, and James (deceased 12 years ago).

Sandra said Eugene was told by his father that he was a change of life baby and cost him money. He had a deep hatred for his father and was never able to resolve it because his father died too early.

Eugene said that what went wrong in the marriage was complicated. There were dissatisfactions on both sides as the relationship grew stale after their son went to college. Sandra began talking to his superiors about family matters. He is concerned about her wellbeing, her physical and mental health. He said she has thought of suicide, her personality has changed: she is weaker, more easily led. She is on drugs which help her live with herself. She is in an organization, not a cult, which is exploitive.

Sandra said she noticed intermittent paranoid behavior in 1977-78. At the time Eugene was working for the National Science Foundation. They became a primary focus for his paranoia even though Eugene changed jobs several times,

each time his reasoning being superiors and office politics. He had little problem getting new jobs because of his expertise in artificial intelligence until his illness affected his work. At present Eugene is an assistant night manager at a "Stop and Shop" food store. Sandra described a marriage of intellectual compatibility and efforts. She told more of her husband's accomplishments than he had. Besides paranoid behavior Sandra described behaviors such as making expensive Swedish coffee, cup after cup, fixing it, taking a few sips and leaving it. She found cups of coffee all over the house. She also described an episode where he did a third person narrative at the dinner table – red in the face and staring – starting with "your father has been attacked again . . . " He directed his paranoia toward her when she stopped being his support and questioned his accusations. He struck her a year ago, became verbally abusive to their son and she got the restraining order in fear and because she is so "demeaned" in his letters. She has become afraid of him.

Their son Jay 17, is a large man and an athlete, according to Sandra. He graduates from high school in June and has joined the Navy. Jay has been seeing a counselor, Daniel Goldfarb, and his grades gradually improved. Eugene hoped John would go to college, He describes him as "intelligent, willful and underdisciplined intellectually." He says Sandra and he are not into sports as their son is.

Sandra would like the divorce to be completed and get help for Eugene.

Barbara Westerberg, CSW,
Diagnostic Unit Coordinator

PSYCHOLOGICAL EVALUATION
Eccli vs. Eccli
Family Services of Bergen County, Hackensack, N.J.

Source of Information: (1) A 90-minute interview with Eugene Eccli conducted jointly with Barbara Westerberg, CSW, on 6/6/89, (2) a 90-minute interview with Sandra Eccli conducted jointly with Barbara Westerberg on 6/8/89, (3) results of the Millon Clinical Multiaxial Inventory administered to both Eugene and Sandra Eccli on 6/12/89 and 6/8/89, respectively and (4) a 40-minute interview with 17-year-old John on 6/12/89.

Impression of the Father: Eugene Eccli is a neatly dressed and groomed 42-year-old businessman appearing older than his stated age who seemed subdued and reserved, pleasant but without apparent warmth. The main characteristic noted was his guardedness and lack of specific detail that would make him or his story understandable. Despite specific and repeated questioning, Eugene remained vague throughout the 90 minutes about his married life, his business life, and even about the specific worries he has about his wife that lead him to seek custody of her.

Eugene described his marriage and life as fairly ordinary with his frequently changing jobs "to better myself careerwise," and then in the last few years having lost a few jobs partly because of his wife's interference in calling his office, he believes. Although obviously quite intelligent and well educated he seemed quite lacking in insight about himself or others around him. Information about his background revealed a boy who grew up emotionally not close to his family, perhaps due to his father's

ng an invalid, but someone who has remained somewhat of a loner, and at present has few if any friends.

Eugene finally suggested that we should have the court papers with complaints about his wife, which he left off after the session. Contents of these papers are quite bizarre and clearly indicate a person suffering from a paranoid process which then makes his guardedness in the interview somewhat more understandable.

Psychological Test Results: The psychological test results for Eugene Eccli provide further data about his personality makeup which suggest "(1) a well-established need for social approval and commendation and (2) a general naivete about psychological matters, including a deficit in self-insight that derives from a long-standing habit of attending to superficial appearances."

"This egocentric man may be identified by his inflated sense of self-importance, his resentful and arrogant attitudes, his socially intimidating manner, and his voiced pride in self-reliance, unsentimentality, and competitive values. Although posturing self-confidence, his behaviors hide a deep insecurity about his self-worth and are employed to compensate for past humiliations and failures. Deeply felt resentment is projected outward, precipitating frequent squabbles, antagonism, and personal and family difficulties. In his opinion, others are belligereent [sic] and antagonistic, and thus he is justified in his defensive aggressiveness.

The guiding principle for this man is that of outwitting others so as to use them to enhance himself. Constantly seeking recognition, admiration, and power, he looks to

exploit others. Closeness and intimacy, displays of weakness, and a willingness to compromise are seen as fatal concessions that can be avoided by acting cool, arrogant, and self-assured.

He is shamelessly self-centered and socially intolerant, aware of – but intentionally inconsiderate of – the feelings of others. He expects special attentions from others without intending to reciprocate. Although he is unlikely to pursue frank antisocial behavior, he may experience alcoholism or drug difficulties. His failures and social irresponsibilities are typically justified with nonchalant indifferences, boastful arrogance, and unvarnished prevarications.

This man is characteristically touchy and jealous, inclined to brood and harbor grudges and likely to ascribe malicious tendencies to others. Easily provoked, he may express sudden, unanticipated brutality. Morevover [sic], he may distort and magnify the incidental remarks of others into major insults and purposeful slanders. Much of his expansive and arrogant demeanor may be a posture and fantasy of importance and potency rather than a reality, and it may be acted out only with safe partners and subordinates. Nevertheless, his desire to impress and to intimidate others is deeply felt and stems from his need to overcome his sense of inner weakness and to vindicate past injustices."

Impression of the Mother: Sandra Eccli impressed as a bright, competent, middleaged woman who is fairly upset, occasionally to the point of tears, as she talks of the "loss" of her husband as he once was and their once-

stable marriage. Sandra wishes that there would be psychiatric and neurological help for Eugene to stop the insidious paranoid process that she has seen growing for about eleven years. She is now alarmed enough about his delusions about herself and his former business associates to be quite concerned for all involved.

Sandra's stability and level of competence are not in any serious question, and her account is entirely believable. In marked contrast to her husband, Sandra answered questions in an open unguarded way, even noting her own doubts and mistakes. She filled in the gaps in his account which had omitted mention of his once-brilliant "boy wonder" level of functioning as a scientist, author, and successful businessman. She traced the deterioration of his career and standing to the sad situation in which he now exists. She sees this as the result of his own insecurity and paranoia with his now being "extremely weird." Unable to do anything to help, she now finds her only course is to protect herself and her son by getting a divorce and if possible to get psychiatric care for him.

The psychological test results for Sandra Eccli suggest some personality problems as well but on a much less severe level, not especially relevant to the problems of this court case.

Interview with the son: John Eccli is a large, blonde, muscular 17 year old boy who related well although quite seriously, and did not exhibit the reserve about talking or sharing his feelings that his father thought that he might, or that his father did. John is remarkable, not only in his superior intellect similar to both his parents, but also in the maturity with which he seems to be handling his

parents' problems. John says that his father has always seemed different and difficult as long as he can remember. He says that they have never had a close relationship because of his Dad's lack of interest in talking or sharing his "dumb jokes." John says he dislikes visiting his Dad these days because "it's boring" since they have so little in common. And yet, he seems to accept his limited relationship and not be unduly disturbed about it.

John admits that as a child he was unhappy and isolated probably stemming from the poor father-son relationship, but somehow since about age 14 he thinks he pulled out of it and realized tht [sic] *he* was okay. Since then he has developed many interests (computers, weight lifting, sports) and friends, including now a steady girlfriend, and generally feels pretty good about his life. He has definite career goals beginning with entering the Navy this summer.

Does he worry about his parents at this time? Well, he thinks his Mom is a very capable, sensible person (with whom he gets along well) and thinks she is good about taking care of herself. He will keep in touch with each parent when he leaves the area and sees no problem with his father that he cannot handle himself.

General Impressions: This is a tragic family story where the father has gradually developed a serious paranoid state of mind, the effects of which have victimized his wife and son as well as himself. The son has somehow managed to escape major serious effects from his father's personality problems and will soon be away on his own in the Navy. The mother, although depressed by the

current crisis with her estranged husband and worried about his behavior, seems otherwise fairly stable.

The court needs to take whatever measures that it can to ensure the safety of the wife including granting her the divorce and full custody of the son. Although Mr. Eccli does not have a violent history, his delusions are so severe and involve a belief in violence from others, that it suggests he might become dangerous. Paranoid persons are unpredicable [sic], making all of this more worrisome.

Court-ordered inpatient psychiatric treatment is a possibility but even if Mr. Eccli is superficially compliant, he is unlikely to see that he has the problem. Prognosis is very poor for such narcissistic and paranoid persons.

RECOMMENDATION: Grant the divorce that the wife is asking, along with full legal and physical custody of the son. Leave visitation up to the son.

Sally Feather, Ph.D.
Clinical Psychologist

SF:RS

PSYCHIATRIC EVALUATION
Eccli vs Eccli
Family Services of B.C., Hackensack, N.J.

Psychiatric evaluation: Sandra and Eugene Eccli and son John, 17.

Sandra Eccli was a 50 year old woman who described a tragic decline in the mood of her husband. He was a man for whom she had great admiration which seemed deserved. She was able to described his achievements in a

way that he could not possibly do. Along with it was her clear distress as she more and more recognized his illness.

According to Mrs. Eccli though an inkling of his illness began 12 years ago when he was working for the National Science Foundation. He began to tell her how that organization turned against him at the beginning she believed him but as time past [sic] and he quit job after job due to machinations of outreach organization (after the NSF) she began to realize all was not well with him.

She told with anguish of his accusing her of betrayal. She found his description of the violence perpetrated on her by others very frightening. There had been no violence and therefore it was all in his mind and as a result she was at risk. She reported 2-3 months ago in a phone conversation with him that he said "don't worry if anything happens to me – you'll be taken care of."

She reported that he has Krohns disease (an intestinal disorder, serious but of unknown etiology) and is supposed to take vitamin B injections. She also is concerned that he might have a brain tumor but he won't see a doctor.

Her own history was relatively innocuous. She has a number of degrees. She has been able to always find work and is currently working. She has no history of mental illness or her family. She denies drug and alcohol abuse. She was a lively woman who is still mourning the husband she once had. That man no longer exists.

The son John, 17 years old, was seen briefly. He said that his father had always been suspicious and difficult and is

now more so. He said his father gave him a bad time about joining the Navy. He was present when his father attacked his mother and came between them. He cannot evaluate his mother's danger at this time.

Eugene Eccli, 42 years old. Mr. Eccli was a tall muscular man, neatly dressed in a business suit and tie. When I asked him to tell me his view of the current situation, he said that there were court proceedings with two areas of activities. He stated that his wife had a restraining order against him and that she has broken it. He said that he in turn has raised a number of issues. "I'm involved in a business vendetta. It has emerged that my wife is a victim of sexual misconduct and mind-altering drugs." When asked how it emerged he said he had strong suspicions and felt he was drugged as well to get him out of the household. When asked for more specific details he said he overheard his wife talk to his son about sedatives and some kind of drug that induces psychosis. This drug made him unable to control his mind, caused a loss of contact with reality, an accumulation of anxiety and fears and an inability to concentrate. His sister somehow warned him of this and he managed to get out of the control of the people and drugs.

He said he learned of the vendetta through the grapevine and that allegedly "I was disliked for having certain job situations." He elaborated when asked in regard to the sexual misconduct stating that his wife was abducted and forced sexually. He stated that she is now in the hands of a "viscious [sic] pimp, a killer."

He feels the court will grant his "reasonable" request for temporary custody. He would not name the viscious [sic]

person though persumably [sic] someone in a company he had left. He has reported all these matters to police and FBI. He made some reference to a shoot out though at this time he doesn't own a gun but knows how to shoot pistols and rifles.

The restraining order came after the "only" episode of violence about one year ago when he knocked his wife down and kicked her. It was made permanent in January 1989. However, he has gradually realized she is a victim and his idea is to be made her guardian and then he can release her from this bondage. He could not tell me what plans he had for her salvation. He has become more and more insistent on reconciliation. He believes his request for guardianship is reasonable and the court will grant it. He then compared the situation to that of Patty Hearst when she was abducted.

Mr. Eccli was vague about his work, the nature of it and where, etc. was not stated as one might expect. He has had 4-5 jobs in the past 2 years. Before that he had been involved in two companies for overlapping periods. Again his role could not be elicited.

The family history was negative and Mr. Eccli had no history of drug abuse, alcohol abuse or hospitalization for mental illness.

His marriage occurred 20 years ago and they have a 17 year old son who is graduating from high school and joining the Navy.

DISCUSSION: Eugene Eccli is suffering from a major psychiatric disorder called paranoia 297.10. Not only does he suffer, but many people involved with him suffer

as a result. Certainly his wife, son and former employers, colleagues, etc.

Eugene Eccli is potentially violent. He has delusions that contain violence. He will not be able to take the Judge's decision regarding custody of his wife in a realistic way even though he says words that satisfy. He already feels he has the right to control her and this will not be altered by reason. What amount of stress would precipitate violence is not something one can forecast. The possibility is decidedly there and the court should not treat it lightly.

RECOMMENDATION: The divorce should be granted. Eugene Eccli should be prevented against further contact with his wife. Their 17 year old son John is not a problem as he has already made his escape via the Navy.

From my examination of the Eccli family it is clear that Mr. Eccli suffers from a serious mental illness called paranoia. While intact in many ways he has delusions that are fixed and will not respond to any treatment other than neuraleptic medication (he may not respond to those drugs either). The aggressive nature of his delusions make him potentially lethal. There is no way to predict accurately the real danger represented by this man. However, most psychiatrists would agree that his illness presents a real danger. Court ordered hospitalization is indicated for this man, though this is not necessarily a guarantee that he won't harm somebody such as his wife.

Jacob E. Stump, MD
Psychiatrist

JES:RS

SANDRA J. FULTON
Box 877
Ramsey, New Jersey 07446
201-825-8700, ext. 270

Pro Se

EUGENE P. ECCLI,
plaintiff

vs.
Sandra J. Eccli
Will von Klemperer
Mark Maletz
Pat DeMarco
Alternatives to
Domestic Violence
Coopers & Lybrand, Inc.
J. Crew, Inc.
defendants

SUPERIOR COURT OF
NEW JERSEY LAW
DIVISION – BERGEN
COUNTY SPECIAL CIVIL
PART DOCKET NO.
L-38190 89

Civil Action

FILED
JAN 5 1990

This matter being opened to the Court on Motion of SANDRA J. ECCLI, acting *Pro Se*, for an order C and the Court having considered the matter and good cause appearing,

IT IS, on this 5th day of January 1990, ORDERED that all Counts of the suit at law brought by EUGENE P. ECCLI, Pro Se, against SANDRA J. ECCLI *et al.* be dismissed with prejudice and

IT IS, further, ORDERED that a copy of this Order be served upon the Plaintiff and all Counsel within seven days of the date of this Order.

/s/ Isabel D. Stark
J.S.C.

Papers filed with the Court:
( ) Answering Papers
( ) Reply Papers

SUPERIOR COURT OF NEW JERSEY

SEAL

ISABEL BRAWER STARK
JUDGE

BERGEN COUNTY COURT HOUSE
HACKENSACK, N. J. 07601-7686
201-646-3015

January 16, 1990

Sandra J. Fulton Eccli
Box 877
Ramsey, New Jersey 07446

Eugene P. Eccli
36 Wilcox Place, East Apt.
Fair Lawn, New Jersey 07410

Shanley & Fisher, P. C.
131 Madison Avenue
Morristown, New Jersey 07962-1979

Berek P. Don, County Counsel
Admin. Bldg., Court Plaza South
21 Main Street
Hackensack, New Jersey 07601

Re: Eugene P. Eccli v. Sandra J. Eccli, et al Docket No. L-38190-89

Ladies & Gentlemen:

On January 5, 1990 during a telephone conference with the two Ecclis, pro se, and counsel for each named defendant, the Court indicated that the entire matter was Dismissed.

Mr. Eccli's complaint alleges acts supposedly perpetrated upon defendant Ms. Eccli by all other defendants. Ms. Eccli has certified that no such acts ever occurred and she was never harmed. I believe Ms. Eccli. None of the alleged acts were said to have occurred in Mr. Eccli's presence. Mr. Eccli has therefore failed to articulate a

cause of action cognizable in the State of New Jersey. See *Decker v. Princeton Packet*, 116 *N.J.* 418, 430 (1989); *Frame v. Kothari*, 115 *N.J.* 638 (1989).

The identical allegations contained in this civil complaint were the basis for a domestic violence complaint filed by Ms. Eccli against Mr. Eccli for harassment and fear for her own safety and well being. (Docket No. FV-02-3801-88-A) This Court held a full plenary hearing on these issues on August 8, 1989. Counsel had been appointed for Mr. Eccli on July 26, 1989. Prior to the hearing, a psychiatrist and a psychologist evaluated Mr. Eccli and his contentions.

At the hearing, testimony was adduced from the psychiatrist and psychologist. They unequivocally stated that Mr. Eccli was suffering from paranoid psychosis and that his allegations (complaint herein) were a figment of that mental illness. They believed that his statements (complaint) demonstrated a probable imminent likelihood of misguided acting out in the form of harm to himself or Ms. Eccli. This Court correlated the experts' evaluations with the demeanor of Mr. Eccli during his statements to the Court and Ms. Eccli's demeanor when she explained the onset of Mr. Eccli's delusions, their continued worsening and devolving into physical attacks on Ms. Eccli, her fear of him and her assertion that none of his allegations ever happened to her. I found the evidence to be patently clear and convincing that Mr. Eccli's allegations were a product of his paranoid psychosis and that his delusions made him a real and present danger to himself and others. By Order dated August 8, 1989, Mr. Eccli was committed to Bergen Pines.

It is this Court's considered opinion that unfortunately Mr. Eccli's emotional distress is a product of his own mental illness and is not a result of the events he relates in his complaint. The Court has found that those events never occurred (except in his mind); the prior orders of the Court were not appealed. Mr. Eccli is collaterally estopped from proceeding with any other filings based on the same or substantially similar facts. *Kozlowski v. Smith*, 193 *N.J. Super* 672 (App. Div. 1984).

Very truly yours,

/s/ Isabel Brawer Stark
Isabel Brawer Stark, J. S. C.

ibs/mc

ORDER ON MOTION

EUGENE ECCLI

-vs-

WILL VON KLEMPERER, ET AL

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-3029-89T1

MOTION NO. M-5697-89

BEFORE PART: N

JUDGE(S):
DREIER
D'ANNUNZIO

FILED JUL 23 1990

MOTION FILED: JUNE 18, 1990

ANSWER(S) FILED: JULY 2, 1990

BY: EUGENE ECCLI
BY:
BY:
BY:

SUBMITTED TO COURT: JULY 16, 1990

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 19th DAY OF July, 1990, HEREBY ORDERED AS FOLLOWS:

MOTION BY	GRANTED	DENIED	OTHER
RESPONDENT COOPER & LYBRAND ET AL FOR SUMMARY DISPOSITION	x		x

SUPPLEMENTAL:

See M-5595-89

I hereby certify that the foregoing is a true copy of the original on file in my office.

/s/ Emille Cox
Clerk

FOR THE COURT:

/s/ William A. Dreier
WILLIAM A. DREIER
P.J.A.D.

dfw
T-23

9/88

ORDER ON MOTION

EUGENE ECCLI

-vs-

WILL VON KLEMPERER, ET AL

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-3029-89T1

MOTION NO. M-5313-89

BEFORE PART: N

JUDGE(S):
DREIER
D'ANNUNZIO

FILED JUL 23 1990

MOTION FILED: MAY 25, 1990

ANSWER(S) FILED: JULY 2, 1990

BY: EUGENE ECCLI
BY:
BY:
BY:

SUBMITTED TO COURT: JULY 16, 1990

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 19th DAY OF July, 1990, HEREBY ORDERED AS FOLLOWS:

MOTION BY	GRANTED	DENIED	OTHER
RESPONDENT WILL VON KLEMPERER, PAT DEMARCO, J. CREW AND POPULAR CLUB PLAN FOR SUMMARY DISPOSITION OR IN THE ALTERNATIVE FOR 30 DAY EXTENSION OF TIME TO FILE BRIEF	x		x

SUPPLEMENTAL:

The motion for summary disposition is granted; the alternative motions are moot. See M-5595-89.

I hereby certify that the foregoing is a true copy of the original on file in my office.

/s/ Emille Cox
Clerk

FOR THE COURT:

/s/ William A. Dreier
WILLIAM A. DREIER
P.J.A.D.

dfw
T-23

9/88

ORDER ON MOTION

EUGENE ECCLI

-vs-

WILL VON KLEMPERER, ET AL

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-3029-89T1

MOTION NO. M-5417-89

BEFORE PART: N

JUDGE(S):
DREIER
D'ANNUNZIO

FILED JUL 23 1990

MOTION FILED: JUNE 1, 1990

ANSWER(S) FILED: JULY 2, 1990

BY: EUGENE ECCLI
BY:
BY:
BY:

SUBMITTED TO COURT: JULY 16, 1990

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 19th DAY OF July, 1990, HEREBY ORDERED AS FOLLOWS:

MOTION BY	GRANTED	DENIED	OTHER
RESPONDENT ALTERNATIVES TO DOMESTIC VIOLENCE FOR SUMMARY DISPOSITION	x		x

SUPPLEMENTAL:

See M-5595-89.

I hereby certify that the foregoing is a true copy of the original on file in my office.

/s/ Emille Cox
Clerk

FOR THE COURT:

/s/ William A. Dreier
WILLIAM A. DREIER
P.J.A.D.

dfw
T-23

9/88

ORDER ON MOTION

EUGENE ECCLI

-vs-

WILL VON KLEMPERER, ET AL

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-3029-89T1

MOTION NO. M-5595-89

BEFORE PART: N

JUDGE(S):
DREIER
D'ANNUNZIO

FILED JUL 23 1990

MOTION FILED: JUNE 11, 1990

ANSWER(S) FILED: JULY 2, 1990

BY: EUGENE ECCLI
BY:
BY:
BY:

SUBMITTED TO COURT: JULY 16, 1990

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 19th DAY OF July, 1990, HEREBY ORDERED AS FOLLOWS:

MOTION BY	GRANTED	DENIED	OTHER
RESPONDENT SANDRA ECCLI FOR SUMMARY DISPOSITION	x		x

SUPPLEMENTAL:

Defendant Eccli's motion for summary disposition is granted. *R.* 2:8-3(b). The dismissal of the complaint is affirmed substantially for the reasons stated by Judge Stark in her oral decision of January 5, 1990.

I hereby certify that the
foregoing is a true copy of the
original on file in my office.

/s/ Emille Cox
Clerk

FOR THE COURT:

/s/ William A. Dreier
WILLIAM A. DREIER
P.J.A.D.

dfw
T-23

9/88

SUPREME COURT OF NEW JERSEY
C-514 September Term 1990

32,671

EUGENE P. ECCLI,

Plaintiff-Petitioner,

vs.

WILL VON KLEMPERER, et al.,

Defendants-Respondents.

ON PETITION FOR CERTIFICATION FILED JAN 24 1991

To the Appellate Division, Superior Court,

A petition for certification of the judgment in A-3029-89T1 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs; and it is further

ORDERED that the appeal in the within matter is dismissed pursuant to *Rule* 2:12-9.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 22nd day of January, 1991.

I hereby certify that the foregoing
is a true copy of the original on file
in my office.

/s/ Stephen Townsend
CLERK OF THE SUPREME
COURT OF NEW JERSEY

/s/ Stephen Townsend
CLERK OF THE
SUPREME COURT

IN THE
SUPREME COURT OF THE UNITED STATES

EUGENE P. ECCLI, *Petitioner*

v.

WILL VON KLEMPERER, *et al.*, *Respondents.*

CERTIFICATE OF SERVICE

I, EUGENE P. ECCLI, HEREBY CERTIFY THAT ON THIS 23RD DAY OF JANUARY, 1991, THREE (3) COPIES OF THE PETITION FOR WRIT OF CERTIORARI IN THE ABOVE-ENTITLED CASE WERE MAILED, FIRST CLASS POSTAGE PREPAID TO COUNSEL FOR ALL RESPONDENTS HEREIN AS LISTED BELOW. I FURTHER CERTIFY THAT ALL PARTIES REQUIRED TO BE SERVED HAVE BEEN SERVED.

ROBERT E. MENSEL, ESQ.
HANLON, HERZFELD & RUBIN, P.C.
EXECUTIVE PLAZA, SUITE 300
10 PARSONAGE ROAD
EDISON, NEW JERSEY 08837-2416
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COUNSEL FOR WILL VON KLEMPERER, PAT DEMARCO, J. CREW, AND POPULAR CLUB PLAN

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PETER J. SCANDARIATO, ESQ.
Office Of The County Counsel
Administration Building
Court Plaza South, 21 Main Street
Hackensack, New Jersey 07601-7000
(201) 646-2560
Counsel for Alternatives To Domestic Violence

I certify under penalty of perjury that the foregoing is true and correct. Executed on January 23, 1991.

/s/ Eugene P. Eccli
Eugene P. Eccli
36 Wilcox Place
Fair Law, NJ 07410
(201) 796-1042
Petitioner, Pro Se

Supreme Court, U.S.
FILED
MAR 5 1991
OFFICE OF THE CLERK

No. 90-1204

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

EUGENE P. ECCLI, *Petitioner*,

v.

WILL VON KLEMPERER, *et al.*, *Respondents*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY BRIEF OF PETITIONER

EUGENE P. ECCLI
36 Wilcox Place
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(201)796-1042
Petitioner, Pro Se

PETITIONER'S REPLY BRIEF

No. 90-1204

TABLE OF CONTENTS

Table Of Authorities..... iv

Alleged Frivolity Of The Petition..... 1

Mythology Of A Divorce Case..... 6

Other "Issues" In The Opposition Brief..... 9

Conclusion..... 19

TABLE OF AUTHORITIES

CASES — PAGE

Allen v. Wright
104 S.Ct. 3315 (1984)..... 14

Bailey v. State Of Alabama
219 U.S. 219 (1910)..... 11

Boqosian v. Gulf Oil Corp.
561 F.2d 434 (3rd Cir. 1977),
cert den, 434 U.S. 1086 (1978)..... 5

Celotex Corp. v. Catrett
106 S.Ct. 2548 (1986)..... 17

Dowling v. City Of Philadelphia
855 F.2d 136 (3rd Cir. 1988)..... 17

Filartiqa v. Pena-Irala
630 F.2d 876 (2nd Cir. 1980)..... 10

Haqans v. Lavine
415 U.S. 528 (1974)..... 10

Hospital Building Co. v. Trustees Of
Rex College
425 U.S. 738 (1976)..... 5

Lafayette Dramatic Productions v. Ferentz
9 N.W.2d 57 (S.Ct.MI 1943)..... 13

In Re Lewis
114 F. 963 (N.D.FL 1902)..... 12

Monroe v. Pape
365 U.S. 167 (1961)..... 8

Neitzke v. Williams
490 U.S. 319 (1989)..... 3

Palko v. State Of Connecticut
302 U.S. 319 (1937)..... 13

Phillips v. Trello
502 F.2d 1000 (3rd Cir. 1974)..... 10

Ex Parte Poresky
290 U.S. 30 (1933)..... 4

Porter v. Califano
592 F.2d 770 (5th Cir. 1979)..... 18

Roe v. Wade
93 S.Ct. 705 (1973)..... 18

Santosky v. Kramer
455 U.S. 745 (1982)..... 16

Sartor v. Arkansas Natural Gas Corporation
321 U.S. 620 (1944),
reh'g den, 322 U.S. 767..... 14

Sonnentheil v. Christian Moerlein
Brewing Co.
172 U.S. 401 (1899)..... 15

Tancrel v. Mayor And Council Of The
Township Of Bloomfield
583 F.Supp. 1548 (D.NJ 1984)..... 8

Traux v. Corrigan
257 U.S. 312 (1921)..... 10

U.S. v. Buck
690 F.Supp. 1291 (S.D.NY 1988)..... 10

United States v. Clement
171 F. 974 (D.SC 1909)..... 12

United States v. Means
627 F.Supp. 247 (D.SD 1985)..... 2

Weil v. Seltzer
873 F.2d 1453 (D.C. Cir. 1989)..... 13

CONSTITUTIONAL PROVISIONS

First Amendment..... 17

Fourteenth Amendment..... 10,12,18

STATUTES AND RULES

28 U.S.C. § 1331..... 9

28 U.S.C. § 1915(d)..... 3

Fed.Evidence.R. 607..... 16

Fed.Evidence.R. 608..... 16

Fed.Evidence.R. 804(3)..... 16

Fed.R.Civ.P. 11..... 3

Fed.R.Civ.P. 12(b)(6)..... 17

Fed.R.Civ.P. 12(e)..... 6

Fed.R.Civ.P. 15(b)..... 15

Fed.R.Civ.P. 15(d)..... 15

Fed.R.Civ.P. 16(c)(10)..... 15

MISCELLANEOUS

2 Blackstone Commentaries..... 12

Informed Consent To Therapy
64 Northwest U.L.R. 628 (1970)..... 13

Legislating The Control Of Behavior Control: Autonomy And The Coercive Use Of Organic Therapies
47 S.California L.R. 237 (1974)..... 13

Notes Of Advisory Committee On Rules: Fed.R.Civ.P. 11..... 3

"Sexually Transmitted Diseases In The AIDS Era", Scientific American, 264, No. 2 (February 1991)..... 18

Therapeutic Justice
57 Minnesota L.R. 289 (1972)..... 12

PETITIONER'S REPLY BRIEF

The opposition brief by Respondents contains false information about this case and also overstates background information about Petitioner in an attempt to bring his credibility into question. Moreover, the issues raised in the Petition For Writ Of Certiorari are evaded, despite the requirement of Supreme Court Rule 15.1 that Respondents address them in their Opposition brief, by a mere parroting of portions of the District Court's opinion.

Most of the issues raised in the Opposition brief have already been dealt with in the Petition For Writ Of Certiorari (hereinafter "Petition"). To the extent that certain arguments are first raised in Respondents' Brief In Opposition (hereinafter "Opposition"), this reply will deal with them.

ALLEGED FRIVOLITY OF THE PETITION

Respondents claim that the Petition is

inherently incredible, completely irrational, and demonstrates a desperate need for psychiatric treatment (Opposition, at 6). This characterization of Petitioner is considerably overstated. Respondents in their Opposition brief are using preliminary findings by certain evaluators which a State court relied on for a specific purpose, namely, to facilitate more thorough evaluation of Petitioner.

Petitioner remains *sui juris*, and was described as not dangerous, stable, and euthymic (i.e. well in spirit) by those responsible for his extensive evaluation over several days (Petition, at 13-15). Petitioner asks the Court, in the interests of justice, to recognize the difficulty of presenting one's charge of corruption to a system in which those explicitly accused of corruption play a chief role, United States v. Means, 627 F.Supp. 247, at 269 (D.SD 1985).

The issue of credibility Respondents now wish to raise was not before the District

Court despite the fact that Respondents had an opportunity to do so. This information does not present a balanced view of Petitioner and results in the danger of unfair prejudice (Petition, at 39-40).

While it is undoubtedly true that the Court has the power to dismiss a Petition as frivolous, the attempt by Respondents to use 28 U.S.C. § 1915(d) as an argument (Opposition, at 1, and 4-5) is inaccurate. Petitioner is acting *pro se*, he is not acting now nor did he act in the past *in forma pauperis*. The correct standard for paying litigants is that the appeal is frivolous when it lacks an arguable basis in law or in fact, Neitzke v. Williams, 490 U.S. 319, at 325 (1989). Fed.R.Civ.P. 11 was not designed to chill enthusiasm or creativity in pursuing factual or legal theories. The criteria is whether the papers in the appeal were based on a plausible view of the law. See Notes Of Advisory Committee On Rules: Fed.R.Civ.P.

11. Such plausibility has been demonstrated by numerous Shepardized citations in the Petition as well as the briefs in the Third Circuit which touch on every critical aspect of Petitioner's original complaint and his appeal.

The Constitutional and other legal points raised in the Petition, as well as those pointed out in the lower court proceedings, are not insubstantial because obviously without merit or because their unsoundness clearly results from previous decisions so as to foreclose the subject and leave no room for the inference that the legal points can be the subject of controversy, Ex Parte Poresky, 290 U.S. 30 ,at 32 (1933). The citations Petitioner has relied on involve all classes of people, in both governmental and non-governmental situations. These citations reflect good law which has stood the test of time. On the other hand, to argue that the Petition is without merit, Respondents must show that Petitioner could not prove any set of facts

which would entitle him to relief, Bogosian v. Gulf Oil Corp., 561 F.2d 434, at 444 (3rd Cir. 1977). cert den, 434 U.S. 1086 (1978); Hospital Building Co. v. Trustees Of Rex College, 425 U.S. 738, at 746 (1976). With the numerous citations in the Petition and in the proceedings in the lower Federal courts, it has not been possible to effectively argue lack of merit, and so Respondents resort to efforts at character assassination.

Finally, Respondents attempt an argument about protecting and preserving the orderly administration of justice, indicating there is a limit to the indulgence of the law (Opposition at 6). However, the citations used to support this argument are farfetched. They refer to troublesome cases where there was a high volume of appeals and motions by a Plaintiff, ranging from over 50 to several hundred, almost all of which were entirely without merit. Petitioner has filed only a few percent of the pleadings and other papers these cases had to deal with and has

acted in an orderly, step-by-step manner, throughout the appeals process. Also, these cases make reference to pleadings which are totally confusing so that the defendants literally could not frame an answer. Respondents in this case, on the other hand, could have filed a motion in the District Court proceeding for a more definite statement pursuant to Fed.R.Civ.P. 12(e) or the District Court could have ordered one *sua sponte* had it considered this a problem. Neither opportunity was acted on. This argument by Respondents is without merit.

MYTHOLOGY OF A DIVORCE CASE

Counsel for certain Respondents, namely Shanley & Fisher, repeatedly in the Federal case and the related non-matrimonial State court case claim that Hon. Isabel Stark, J.S.C. presided in a matrimonial action involving Petitioner. This overstatement has been pointed out three times, and yet Respondents continue to present partial information which

can have the effect of misleading the Court. In fact, Hon. Andrew P. Napolitano, J.S.C. presided over the final divorce proceeding. See Petition, at 15. Also, Petitioner was not represented by the Bergen County Mental Health Law Project during this matrimonial action. He represented himself *pro se* upon order signed by Hon. Conrad W. Krafte, J.S.C.

Respondents use this ploy of confusing the matrimonial action with Petitioner's detention for evaluation in an attempt to make it appear that Petitioner has used the case in District Court to try to prevent his wife from getting a divorce. Petitioner has never argued in any court that his wife should not be allowed in a timely manner to obtain a divorce which she freely desires. The reasons why Petitioner did not make this action a part of a matrimonial action have already been described in the Petition at 15-16.

At the divorce proceeding Judge Napolitano

was made aware of the existence of an action in State court and the appeal of the case in Federal Court. Petitioner there argued that these actions were separately adjudicable because they are based on a different set of facts, and the judge was explicit that the grant of divorce that day did not have a preclusive effect on these other actions, Tancrel v. Mayor And Council Of The Township Of Bloomfield, 583 F.Supp. 1548, at 1550 (D.NJ 1984). Also, it was not necessary for Petitioner to wait and rely solely on the outcome of the related non-matrimonial action in State court where procedural constrain made it doubtful that Constitutional issues would ever be considered. The Federal remedy is supplementary to the State remedy, and the latter need not first be sought and refused before the Federal one is invoked, Monroe v. Pape, 365 U.S. 167, at 183 (1961).

The other matters with respect to the related non-matrimonial case in State court have been addressed in the Petition, at 8.

Other "Issues" In The Opposition Brief

Respondents appear to falsely frame an alleged jurisdictional issue and then claim that Petitioner never addressed this "issue" in the proceedings below. Respondents claim (Opposition at 7) that the District Court in essence refused jurisdiction because the complaint alleged a cause of action under state law sounding in tort and a lack of complete diversity in the case. Petitioner interpreted the District Court opinion as indicating that, in the absence of complete diversity, there was sole reliance on Federal question jurisdiction pursuant to 28 U.S.C. § 1331 because the original Federal complaint, based on a different legal theory than the complaint in State court, formally alleged overt acts in furtherance of a civil rights conspiracy which resulted in a deprivation of Constitutional rights (Petition, at 7A-8A). Petitioner in his brief before the Third Circuit presented precedent indicating that a Federal court could also exercise

pendent jurisdiction over a defamation-related State court case. Additional precedent located since then supports this view, Phillips v. Trello, 502 F.2d 1000, at 1005 (3rd Cir. 1974); Hagans v. Lavine, 415 U.S. 528, at 536 and 542 n.10 (1974). Alternately, because viola of international law has been alleged as a result of complicity in or incitement of torture by public officials, Federal courts do have jurisdiction to enforce this component of the Nation's domestic law, Filartiga v. Pena-Irala, 630 F.2d 876, at 882 n.11/article 7, 883, and 885 (2nd Cir. 1980); U.S. v. Buck, 690 F.Supp. 1291, at 1297 (S.D.NY 1988). The Fourteenth Amendment is a pledge of equal protection of the laws, Truax v. Corrigan, 257 U.S. 312, at 332-333 (1921).

Respondents also claim that Petitioner not only did not produce a copy of the alleged contract but also did not ask for its recision in the complaint in Federal court (Opposition at 5-6). In fact, Petitioner attached to his complaint in Federal court a copy of

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the related complaint in State court as background information wherein he did explicitly ask for recision (Opposition at App.2). Petitioner in his complaint in District Court also asked for a restraining order which would have had the practical effect of a recision (Opposition at App.6). Also, a written contract is not essential to a condition of peonage (Petition at 38). An alleged debt or otherwise is sufficient, because the offense primarily involves the control by which the personal service of one person is disposed of or coerced for another's benefit, Bailey v. State Of Alabama, 219 U.S. 219, at 241 (1910). Other forms of involuntary servitude, such as villeinage (e.g. a villein in gross or a villein socage) were established by social custom, and even though the "base" services may have had some economic value there was no need of a formal debt as a rationale. Rather the fealty and services were compelled by local habit or usage as if by ordinance similar to the way we think of custom or usage with respect to under color of state law in the context

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of the Fourteenth Amendment today, In Re Lewis, 114 F. 963, at 966 (N.D.FL 1902); 2 Blackstone Commentaries 61-62, 91, and 95.

What constitutes coercion is a question of fact, each case must depend on its own circumstances, and the character and conditions of life of the two parties are to be always considered, United States v. Clement, 171 F. 974, at 976 (D.SC 1909). The alleged therapeutic control of Petitioner's former spouse, in order to control my deviance because of a first-time, minor, out-of-character domestic violence offense, is an interactional approach to control which is virtually foreign to our legal system, D.B. Wexler, Therapeutic Justice, 57 Minnesota L.R. 289, at 301-302 (1972). It involves use of a non-penal statute for oppression. Attempts at camouflage using behaviorist psychology coupled with a defense based on alleged contributory negligence on her part are rather weak. Freedom to

control one's mind is the matrix, the indispensable condition, of nearly every other form of freedom; and liberty and justice cannot exist once the capacity for freedom of thought is virtually eliminated, Palko v. State Of Connecticut, 302 U.S. 319, at 326-327 (1937). "Innovative therapy" involving antipsychotic drugs or other biobehaviorial control techniques which can be psychologically addictive, M. Shapiro, Legislating The Control Of Behavior Control: Autonomy And The Coercive Use Of Organic Therapies, 47 S.California L.R. 237, at 263-264 (1974), can also be used to suppress conditioned avoidance behavior (Petition at 33). Its alleged use raises serious issues of informed consent, Weil v. Seltzer, 873 F.2d 1453, at 1458-1459 (D.C. Cir. 1989); J. Waltz & T. Scheuneman, Informed Consent To Therapy, 64 Northwest U.L.R. 628, at 635-643 (1970). Moral duress, in the sense of oppression or taking undue advantage of her resulting weakness, is also an important consideration in this case, Lafayette Dramatic

Productions v. Ferentz, 9 N.W.2d 57, at 65-66 (S.Ct.MI 1943).

Petitioner provided ample citations in the lower court proceedings to indicate that his injuries were personal (distinct, palpable, and clearly within his zone of interest), traceable, and redressable. He should have standing with respect to the cumulative impact of the counts in the complaint, Allen v. Wright, 104 S.Ct. 3315, at 3324 (1984). See also Petition at 18.

The only real basis for summary judgement in the District Court was the self-serving denials of Respondents and the denial in an affidavit by Sandra Eccli, who as a defendant in the related non-matrimonial State court case, had an interest in the subject matter of the litigation. The mere fact that a witness is interested in the result of the suit has been deemed sufficient to require the credibility of the testimony to be submitted to the jury as a question of fact, Sartor

v. Arkansas Natural Gas Corporation, 321 U.S. 620, at 628 (1944), reh'g den, 322 U.S. 767; Sonnentheil v. Christian Moerlein Brewing Co., 172 U.S. 401, at 408 (1899).

Respondents allege that errors with respect to jurisdiction and standing in the District Court's opinion are harmless because the claim is beyond proof. This ignores the fact that Petitioner has a right to discovery even if recovery appears unlikely (Petition at 38). It also ignores the possibility, if necessary, of amendments to conform to the evidence pursuant to Fed.R.Civ.P. 15(b) or supplemental pleadings pursuant to Fed.R.Civ.P. 15(d) at the conclusion of an ample opportunity for discovery. Moreover, Respondents' argument presents a confused view of the breadth of experience and power the Federal judiciary has, in the interest of substantial justice, to adopt special procedures pursuant to Fed.R.Civ.P. 16(c)(10) in cases where there are complex issues and unusual proof problems. A cursory review of the Federal Rules Of Evidence reveals

the shallow and conclusory nature of their argument; Rule 607 dealing with impeachment of witnesses, Rule 608 dealing with evidence of the character and conduct of a witness several years ago contrasted with her behavior currently, and Rule 804(3) dealing with statemen against Respondents' own interests, to mention but a few possibilities. In a civil case such as this, only the preponderance of the evidence is required to obtain an equitable remedy.

Also, this Court does have the power to adjust State domestic relations laws when unconstitutional means have been employed, Santosky v. Kramer, 455 U.S. 745, at 768 n.18 (1982). Further, there is no necessarily irreconcilable conflict between a Constitutionall proper interpretation of current New Jersey domestic violence statutes and the remedy which Petitioner seeks.

There is precedent for allowing a period of about one year prior to summary judgment to assure an ample, full opportunity for

discovery, rather than the few months Petitioner had available, Dowling v. City Of Philadelphia, 855 F.2d 136, at 137 (3rd Cir. 1988); Celotex Corp. v. Catrett, 106 S.Ct. 2548, at 2550 and 2554 (1986). See also Petition at 36-38.

The temptation has been to assume Petitioner was dilatory with discovery, which was all the more attractive an hypothesis when Respondents did everything possible to cast doubt on his credibility and characterize the case as a matrimonial action. He was merely slowed in discovery by limited financial resources and the further need while holding two jobs of doing extensive research so he could oppose on legal grounds a motion for dismissal pursuant to Fed.R.Civ.P. 12(b)(6) which was pending in the same timeframe as the premature motion for summary judgment. Summary judgment should have been used most sparingly in a First Amendment case such as this involving delicate Constitutional rights, complex fact situations, disputed testimony, and questionable credibilities,

Porter v. Califano, 592 F.2d 770, at 778 (5th Cir. 1979).

The situation Petitioner alleged in his complaint is not merely socially regressive with respect to the minimal set of civil rights assured by the Fourteenth Amendment to every person who sets foot within the jurisdiction of this country. From a public health perspective it is increasingly suicidal, S.O. Sevgi and K.K. Holmes, "Sexually Transmitted Diseases In The AIDs Era", Scientific American, 264, No. 2 (February 1991), 68-69. Factors to be considered appear to include the detriment the State is imposing on the woman, by forcing her into a distressful lifestyle and future, which is likely to tax her mental and physical health, Roe v. Wade, 93 S.Ct. 705, at 727 (1973).

CONCLUSION

Petitioner's case is justiciable. Ample, full discovery should have been allowed prior to the grant of summary judgment. The Writ Of Certiorari should be granted.

Respectfully submitted,

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